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Evaluating Michigan's Guilty but Mentally Ill Verdict: An Empirical Study

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EVALUATING MICHIGAN'S GUILTY BUT MENTALLY ILL VERDICT: AN EMPIRICAL STUDY

[A guilty but mentally ill verdict] is an atrocious idea for . . . we would still be in the sorry position of wanting to punish a mentally ill person for his sickness . . . .

—John W. Hinckley, Jr.[1]

The criminal justice system has tilted too decidedly in favor of the rights of criminals and against the rights of society. [The guilty but mentally ill statute] would effectively eliminate the insanity defense . . . .

—Attorney General William French Smith[2]

On June 21, 1982, John W. Hinckley, Jr. was acquitted as not guilty by reason of insanity ("NGRI")[3] of an attempted assassination of the

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1. Hinckley, *The Insanity Defense and Me*, NEWSWEEK, Sept. 20, 1982, at 30.

2. N.Y. Times, July 20, 1982, at A18, col. 3.

3. The modern insanity defense evolved from the mens rea doctrine of English common law which presumed that an illegal act was not a crime unless performed with criminal intent. *See, e.g.*, Beverley's Case, 76 Eng. Rep. 1118, 1121 (K.B. 1603) ("No felony or murder can be committed without . . . a felonious intent and purpose."); Williamson v. Norris, [1899] 1 Q.B. 7, 14 ("[T]he general rule of English Law is, that no crime can be committed unless there is mens rea."); Carter v. United States, 252 F.2d 608, 616 (D.C. Cir. 1957) ("[I]f a man . . . is not a free agent, or not making a choice, or unknowing of the difference between right and wrong, or not choosing freely, or not acting freely, he is outside the postulate of the law of punishment."). *See generally* Crotty, *The History of Insanity as a Defense to Crime in English Criminal Law*, 12 CALIF. L. REV. 105 (1924).

The insanity defense was well-established by the sixteenth century. *See generally* Platt & Diamond, *The Origins of the "Right and Wrong" Test of Criminal Responsibility and Its Subsequent Development in the United States: A Historical Survey*, 54 CALIF. L. REV. 1227 (1966). Even prior to 1600, however, defendants considered insane were commonly offered royal pardons, 2 F. POLLOCK & F. MAITLAND, THE HISTORY OF ENGLISH LAW 479-81 (2d ed. 1952), thereby reflecting a practice now recognized as a basic function of the insanity defense: sparing a criminally responsible but mentally ill defendant from punishment. *See* Gray, *The Insanity Defense: Historical Development and Contemporary Relevance*, 10 AM. CRIM. L. REV. 559, 559-64 (1972).

The modern standard for the insanity defense in most American courts is some variation of the "M'Naghten rule," under which the defendant must be unable to distinguish right from wrong at the time he committed the criminal act. *See* A. GOLDSTEIN, THE INSANITY DEFENSE

President of the United States.[4] Public dissatisfaction with the Hinckley verdict triggered a new national debate over the insanity defense.[5] One proposal for reforming the insanity defense is the adoption of an additional verdict, guilty but mentally ill ("GBMI"), to create a middle ground between guilty and NGRI.[6]

The first GBMI verdict was enacted by the Michigan legislature in 1975.[7] Unlike the NGRI verdict, which exonerates defendants from criminal responsibility,[8] Michigan's GBMI verdict holds defendants

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45 (1967). During the twentieth century many states also added an "irresistible impulse" test as a second basis for finding a defendant insane. *Id.*; *see also* Note, *Criminal Responsibility: Changes in the Insanity Defense and the "Guilty But Mentally Ill" Response*, 21 WASHBURN L.J. 515, 517-20 (1982).

For comprehensive histories of the origins of the insanity defense see S. GLUECK, MENTAL DISORDER AND THE CRIMINAL LAW 123-60 (1925); E. COKE, THE THIRD PART OF THE INSTITUTES OF THE LAW OF ENGLAND 4-6, 54 (1817); 2 W. HOLDSWORTH, A HISTORY OF ENGLISH LAW 50-54 (5th ed. 1942); 3 *id.* at 371-75 (5th ed. 1942); F. POLLOCK & F. MAITLAND, *supra*, at 476-84; H. WEIHOFEN, MENTAL DISORDER AS A CRIMINAL DEFENSE 52-64 (1954).

4. N.Y. Times, July 20, 1982, at A18, col. 3.

5. Attorney General William French Smith has urged Congress to eliminate the insanity defense. N.Y. Times, July 20, 1982, at A18, col. 3. According to Hinckley's jury foreman, the NGRI verdict "should be changed in some way where the defendant gets mental help, gets help enough that he is not harmful to himself and society, and then be punished for what he has done wrong." Taylor, *Too Much Justice*, HARPER'S, Sept. 1982, at 56, 66. *See* Press, Camper, Clausen, Kasindorf, Monroe, Shapiro & Taylor, *The Insanity Plea On Trial*, NEWSWEEK, May 24, 1982, at 56, 57 ("[The insanity defense] has been controversial for years, and now the case of John Hinckley Jr. may fundamentally alter it.") [hereinafter cited as Press]; Leo, *Is the System Guilty?*, TIME, July 5, 1982, at 26 (" 'The verdict is the best thing that ever happened to the insanity plea because I think in the long run it's going to be abolished . . . we're going to get rid of it.' ") (quoting legal sociologist Geoffrey Alpert); *see also* Lauter, *Why Insanity Defense Is Breaking Down*, NAT'L L.J., May 3, 1982, at 1, col. 1, at 2, col. 1. ("[A]n Associated Press/NBC News poll showed that 87% of the public believed that too many murderers were using insanity pleas to avoid jail. Nearly 70% [of those sampled] would have banned insanity defenses altogether in murder cases."); Kaufman, *The Insanity Plea on Trial*, N.Y. Times, Aug. 8, 1982, § 6 (Magazine), at 1 ("The [NGRI] controversy touches on deeply felt American attitudes toward crime, punishment and personal responsibility . . . .").

6. MICH. HOUSE LEG. ANALYSIS SECTION, THIRD ANALYSIS OF MICH. H.B. 4363, 78th Leg., at 2 (July 18, 1975) [hereinafter cited as THIRD ANALYSIS OF MICH. H.B. 4363]. Many proponents of the GBMI statute view the GBMI verdict as a modified guilty verdict. *Id.*; *see also* Note, *The Constitutionality of Michigan's Guilty but Mentally Ill Verdict*, 12 U. MICH. J.L. REF. 188, 198 n.75 (1978). The Michigan Court of Appeals has stated that the statute was enacted as an "in-between classification." *See* People v. Jackson, 80 Mich. App. 244, 246 (1977).

7. *See* 1975 Mich. Pub. Acts 180. Michigan's GBMI verdict was codified in a number of statutes. *See* MICH. COMP. LAWS ANN. § 768.36 (1982) (defining the standard for a GBMI verdict, setting the procedure for pleading and sentencing, and describing probation under a GBMI verdict); *id.* § 330.1400a (defining mental illness); *id.* § 768.29a(2) (requiring a GBMI instruction whenever the insanity defense is raised). For the purposes of this Project, the term "GBMI statute" shall include all the provisions necessary to implement a GBMI verdict.

8. *Id.* § 330.2050(1). Historically, the insanity defense required no special plea and demanded no particular dispositional consequences; if the defense was successful, the defendant was simply released. Many states found, however, that this release procedure endangered public safety. Consequently, even though an acquittee was not considered morally blameworthy for dangerous and antisocial acts, restraints upon his freedom were justified by a need to protect society. *See, e.g.*, The Criminal Lunatics Act of 1800, 40 Geo. 3, ch. 94. (committing an individual acquitted by

criminally responsible for their acts.[9] A defendant found GBMI is sentenced like a defendant found guilty; however, a GBMI verdict theoretically guarantees the defendant any necessary mental health treatment during the sentence.[10]

The primary purpose behind the Michigan GBMI verdict was to decrease the number of insanity acquittals.[11] Michigan legislators hoped to use the new verdict to prevent the early release of dangerous NGRI acquittees by offering Michigan juries a substitute for the insanity verdict.[12]

Since 1975, the Michigan statute has served as the prototype for GBMI legislation in other states. By January 1983, eight states had enacted versions of the GBMI verdict.[13] In addition, numerous other state legislatures and the federal government are presently considering the adoption of GBMI statutes.[14]

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reason of insanity to the care and custody of the sovereign as guardian for incompetent members of society under the *parens patriae* doctrine). *See generally* J. FULLIN & F. FOSDAL, WISCONSIN STATE INSANITY DEFENSE COMMITTEE, GUILTY BUT MENTALLY ILL VERDICT AND DISPOSITION (1980) (on file with the *Journal of Law Reform*); *see also* F. POLLOCK & F. MAITLAND, *supra* note 3, at 1233-37.

Most states have implicitly adopted the principle underlying the Lunatics Act by providing for the automatic or quasi-automatic commitment of those acquitted as insane. According to a 1978 survey, ten states provide for automatic, indeterminate commitment following an NGRI verdict (Arkansas, Colorado, Georgia, Kansas, Maine, Minnesota, Missouri, Nebraska, Nevada, and Ohio), eleven states require only that the trial judge find that the release of the acquitted person would be dangerous (Alaska, Connecticut, Florida, Hawaii, Iowa, Louisiana, Oregon, Rhode Island, Virginia, Washington, and Wyoming), four states require a judicial finding of continuing insanity (Alabama, California, Hawaii, and Oregon), six states permit commitment at the judge's discretion without the necessity of any findings (Delaware, Maryland, Massachusetts, New Hampshire, Pennsylvania, and South Dakota), and in two states the jury decides whether to commit (Kentucky and Mississippi). *See* Eule, *The Presumption of Sanity: Bursting the Bubble*, 25 U.C.L.A. L. REV. 637, 657-59 (1978). Independent civil commitment is required by statute only in the District of Columbia and the remaining 18 states (Arizona, Idaho, Illinois, Indiana, Michigan, Montana, New Jersey, New York, North Carolina, North Dakota, Oklahoma, South Carolina, Tennessee, Texas, Utah, West Virginia, and Wisconsin). Even in these jurisdictions, the prosecution is often aided by a presumption of continuing insanity. *Id.*

9. *See* MICH. COMP. LAWS ANN. § 768.36(3) (1982).

10. *Id.* § 768.36(3). It is unlikely that Michigan's GBMI convicts actually receive this "guaranteed" treatment. *See infra* notes 49, 136 & 137 and accompanying text.

11. *See infra* notes 30-38 and accompanying text.

12. THIRD ANALYSIS OF MICH. H.B. 4363, *supra* note 6, at 2.

13. The states include: Alaska, ALASKA STAT. § 12.47.020(c) (Advance Leg. Serv. 1982); Connecticut, CONN. GEN. STAT. ANN. § 539.13 (West Supp. 1982); Georgia, GA. CODE ANN. § 27-1503 (Supp. 1982); Illinois, ILL. ANN. STAT. ch. 38, § 6-2(c) (Smith-Hurd Supp. 1982-83); Indiana, IND. CODE ANN. § 35-36-2-3 (West Supp. 1982-1983); Kentucky, KY. REV. STAT. ANN. § 504.130 (Michie Supp. 1982); and New Mexico, N.M. STAT. ANN. § 31-9-3 (Supp. 1982).

Prior to the adoption of the verdict by the Kentucky legislature, the Kentucky Supreme Court took the unusual step of recommending such adoption. Gall v. Commonwealth, 607 S.W.2d 97, 113 (Ky. 1980), *cert. denied*, 450 U.S. 989 (1981).

Two other states, Idaho and Montana, have completely abolished the insanity defense. IDAHO CODE § 18-207 (Supp. 1982); MONT. CODE ANN. §§ 46-14-101 to -401 (1981).

14. Some of the states considering a GBMI statute include Florida, S. 323 (1980), H. 710 (1980); Hawaii, H. 86 (1981), S. 2073-80 (1980); Maryland, S. 806 (1980), S. 1284 (1978); New

Because Michigan's GBMI statute has been in effect for several years, enough data exists to assess the statute's use and practical effect. The purpose of this Project is to evaluate the statute and thus provide guidance for those legislatures considering similar proposals. This Project concludes that the new verdict has completely failed in its intended purpose. Part I describes the statute's history, legislative purpose, and procedural mechanics. Part II analyzes the displacing effect of the GBMI verdict on other verdicts, and sets forth empirical data on the disparate characteristics of defendants who raise the insanity defense and are subsequently found GBMI, NGRI, or guilty. Part III analyzes the data and concludes that the statute has failed to achieve its goals. No fewer defendants are being found NGRI today than before the GBMI statute was enacted. Although the strong influence of Michigan's Center for Forensic Psychiatry in insanity-related defenses is one reason to believe that the GBMI verdict may have a different effect in other states, in Michigan it is clear that the statute has merely substituted a new name tag for certain defendants who, in the absence of the new statute, probably would have been found guilty.

I. THE DEVELOPMENT OF THE GBMI VERDICT

A. Adjudication of the Mentally Ill Defendant Prior to the GBMI Statute

Until recently, adjudication of the mentally ill defendant was not an issue in the Michigan courts. Defendants found guilty — regardless of manifestations of mental illness — were sentenced no differently from other defendants convicted of crimes. On the other hand, defendants found NGRI were subject to Michigan's automatic-commitment statute which required immediate and indefinite commitment to a state

Hampshire, S. 169 (1979), S. 51 (1981); New York, S. 11765 (1980), S. 4013 (1979), S. 7185 (1978), H. 9705 (1978); Ohio, S. 297 (1979); and Pennsylvania, S. 171 (1981), H. 1162 (1979). Congress presently has a number of bills before it that would create some variation of a GBMI verdict. *See, e.g.*, S. 1106, 97th Cong., 1st Sess. (1981); S. 2672, 97th Cong., 2d Sess. (1982); H.R. 5395, 97th Cong., 2d Sess. (1982); H.R. 6653, 97th Cong., 2d Sess. (1982); H.R. 6702, 97th Cong., 2d Sess. (1982); H.R. 6709, 97th Cong., 2d Sess. (1982); H.R. 6717, 97th Cong., 2d Sess. (1982); H.R. 6718, 97th Cong., 2d Sess. (1982); H.R. 6726, 97th Cong., 2d Sess. (1982); H.R. 6742, 97th Cong., 2d Sess. (1982); H.R. 6947, 97th Cong., 2d Sess. (1982); H.R. 6949, 97th Cong., 2d Sess. (1982).

In addition, a Reagan Administration Task Force has recommended the adoption of a GBMI verdict:

> The Attorney General should support or propose legislation that would create an additional verdict in federal criminal cases of "guilty but mentally ill" modeled after the recently passed Illinois statute and establish a federal commitment procedure for defendants found incompetent to stand trial or not guilty by reason of insanity.

U.S. DEP'T OF JUSTICE, ATTORNEY GENERAL'S TASK FORCE ON VIOLENT CRIME: FINAL REPORT 54 (1981).

mental institution.[15] Some observers believe that the stigma associated with mental health treatment[16] and the prospect of indeterminate confinement in a mental hospital often deterred defendants from raising the defense.[17] The automatic commitment of those who successfully raised the defense seemed to ensure public safety through incarceration and involuntary hospitalization, and consequently generated little public concern over the adjudication of mentally ill defendants.[18]

During the 1970's, however, the constitutionality of statutes permitting the automatic, indefinite commitment of defendants found NGRI was challenged in state and federal courts.[19] Many of these challenges produced major changes in the procedural and substantive rights of the mentally ill.[20] In *People v. McQuillan*,[21] the Michigan Supreme Court

15. Act of July 12, 1966, Pub. Act No. 266, § 767-27b, 1966 Mich. Pub. Acts 380 (repealed 1974) (specifying that any person found NGRI shall be immediately committed to the Department of Mental Health for treatment in a state hospital and released only after an evaluation and recommendation for release from the Center for Forensic Psychiatry).

16. "A strong social stigma remains attached to defendants who seek or accept mental health care." Interview with Dr. Elissa P. Benedek, M.D., Director of Research and Training, Center for Forensic Psychiatry, in Ann Arbor, Michigan (Sept. 4, 1981) [hereinafter cited as Benedek Interview].

17. Letter from Thomas C. Parker, Chief Trial Attorney for the Office of the Defender in Grand Rapids, Michigan, to the authors (Aug. 20, 1982) ("In many cases, such a stigma is attached to the 'mentally ill' section [of corrections] by the judge, or corrections department, that [the] defense will elect not to even mention [a mentally ill defense].") (on file with the *Journal of Law Reform*); Lauter, *supra* note 5, at 11 (observing that when New York state offered prisoners with mental problems a choice between staying in prison and admission to a mental hospital, almost 90% took prison).

18. *See* J. FULLIN & F. FOSDAL, *supra* note 8, at 3.

19. The *parens patriae* doctrine was eroded by decisions holding that an individual's constitutional right to liberty and to avoid the stigma associated with mental health care may only be abrogated upon proof of present mental illness and dangerousness. *See, e.g.*, O'Connor v. Donaldson, 422 U.S. 563 (1975); Stamus v. Leonhardt, 414 F. Supp. 439 (S.D. Iowa 1976); Doremus v. Farrell, 407 F. Supp. 509 (D. Neb. 1975); Bell v. Wayne County Gen. Hosp., 384 F. Supp. 1085 (E.D. Mich. 1974); *see also* Lynch v. Baxley, 386 F. Supp. 378 (M.D. Ala. 1974) (striking down *ex parte* summary detention of insane persons as violative of due process), *rev'd on other grounds*, 651 F.2d 387 (5th Cir. 1981); Lessard v. Schmidt, 349 F. Supp. 1078 (E.D. Wis. 1972), *vacated and remanded on procedural grounds*, 414 U.S. 473, *judgment reinstated*, 379 F. Supp. 1376 (E.D. Wis. 1974), *vacated and remanded on procedural grounds*, 421 U.S. 957 (1975), *judgment reinstated*, 413 F. Supp. 1318 (E.D. Wis. 1976).

20. Several decisions held that proof of present mental illness and dangerousness had to be produced under courtroom procedures which offered the defendant due process rights equivalent to those enjoyed by individuals civilly committed. *See, e.g.*, Jackson v. Indiana, 406 U.S. 715 (1971); Bolton v. Harris, 395 F.2d 642 (D.C. Cir. 1968); Suzuki v. Quisenberry, 411 F. Supp. 1113 (D. Hawaii 1976).

In some jurisdictions the dangerousness finding must be supported by proof of specific and recent overt acts or threats of violence against oneself or others. *See, e.g.*, Doremus v. Farrell, 407 F. Supp. 509, 514-15 (D. Neb. 1975). In addition, liberty cannot be denied for treatment purposes where treatment is not actually provided, or when the individual does not need custodial treatment. *See, e.g., Jackson*, 406 U.S. at 715; *Bolton*, 395 F.2d at 642. Finally, the fact that a person has been accused of a crime or has served a criminal sentence is an insufficient basis for abrogating these rights, because the purpose of the commitment is rehabilitation, not punishment. *See, e.g., Jackson*, 406 U.S. at 724; Baxstrom v. Herold, 383 U.S. 107 (1966).

21. 392 Mich. 511, 221 N.W.2d 569 (1974).

struck down the state's automatic-commitment statute as a denial of equal protection because it provided substantially different procedures and standards for the commitment of NGRI defendants than for individuals civilly committed.[22] Under the *McQuillan* holding, NGRI defendants, like individuals subject to civil commitment,[23] are entitled to a full hearing to determine mental illness, dangerousness, or incompetence to meet basic needs.[24] The court stipulated that all previously committed NGRI defendants were to be evaluated and released if they did not qualify for civil commitment.[25]

In the year following the *McQuillan* decision, many of the 270 patients held under NGRI verdicts were released without hearings because hospital or state officials believed that they could not prove that these patients met the criteria for civil commitment.[26] Shortly after their release, two of these patients committed violent crimes.[27] Public outcry over the release of such dangerous mental patients[28] prompted the

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22. *Id.* at 535-36, 547, 221 N.W.2d at 580-81, 586 ("Equal protection demands that differences in treatment of classes be based on a rational basis.").

The *McQuillan* court stated that an NGRI verdict justified a period of temporary detention of up to 60 days for medical observation, but that "upon completion of the examination and observation, due process and equal protection require that a defendant found not guilty by reason of insanity must have the benefit of commitment and release provisions equal to those available to those civilly committed." *Id.* at 547, 221 N.W.2d at 586.

Michigan's mental health statutes define a "person requiring treatment" as one who is mentally ill and (1) can be expected within the near future to seriously injure himself or another person or (2) is unable to attend to his basic physical needs. MICH. COMP. LAWS ANN. § 330.1401 (1982).

23. The procedures for these groups are substantially similar but not identical. Even after *McQuillan*, defendants found NGRI remained subject to temporary detention without a prior hearing. *See supra* note 22. In addition, the *McQuillan* court never discussed whether the NGRI defendant's equal protection rights were violated by the requirement — not present in civil commitment cases — that discharge be preceded by an evaluation and recommendation for release by the Forensic Center. 392 Mich. at 543 n.9, 221 N.W.2d at 584 n.9. *See* Morris, *Mental Illness and Criminal Commitment in Michigan*, 5 U. MICH. J.L. REF. 2, 38-39 (1971) (arguing that there should be statutes "equating mental patients acquitted of crime by reason of insanity with other civil mental patients in *all* respects — including treatment, release, and discharge . . . .") (emphasis in original); *see also* Hamann, *The Confinement and Release of Persons Acquitted by Reason of Insanity*, 4 HARV. J. ON LEGIS. 55 (1966); Note, *Releasing Criminal Defendants Acquitted and Committed Because of Insanity: The Need for Balanced Administration*, 68 YALE L.J. 293 (1958) (advocating reform in procedural rules for handling release).

24. 392 Mich. at 547, 221 N.W.2d at 586.

25. *Id.*

26. Following the *McQuillan* decision, approximately 150 individuals were released as no longer ill or dangerous. Schwartz, *Moving Backward Confidently*, 54 MICH. ST. B.J. 847, 848 (1975).

27. Diebolt & Mitchell, *Killer, Freed as Sane, Held in Wife's Slaying*, Detroit Free Press, April 15, 1975, at A1, col. 3, at A8, col. 1. One of the released patients, John McGee, had recently won an NGRI acquittal on a murder charge. Several weeks after his release he brutally killed his wife. McGee was subsequently found guilty of first degree murder. Mitchell, *McGee Convicted: Faces Life Term for Killing Wife*, Detroit Free Press, Oct. 8, 1976, at A3, col. 2, at A11, col. 1.

28. McGee's release, *see supra* note 27, was so strongly criticized that Justice Williams, the author of the *McQuillan* decision, felt it necessary to respond publicly: "The Supreme Court did not free John McGee. The Supreme Court [merely] interpreted the law (which the court

Michigan legislature to develop an alternative to the insanity verdict for defendants in need of mental health care. The result of this effort was a proposal to add a guilty but mentally ill verdict.[29]

B. Legislative History of the GBMI Statute

Proponents of the GBMI statute argued that it would protect society by hospitalizing and incarcerating defendants who might otherwise be found NGRI and subsequently released, pursuant to *McQuillan*.[30] Legislators anticipated that the GBMI verdict would reduce the incidence of NGRI acquittals. They emphasized that a defendant found GBMI would be incarcerated because of conviction, not insanity, and would therefore be unable to petition for release under *McQuillan* on the grounds that he was not civilly committable.[31] Advocates of the new verdict also noted that the GBMI convict, unlike the NGRI acquittee, would have to serve a definite sentence in either a mental health or correctional facility.[32]

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did not write) as to release and commitment procedures . . . ." Diebolt, *supra* note 27, at A8, col. 2 (parenthetical in original quotation).

Concern over the abuse of the insanity defense was also precipitated by studies from the Forensic Center. One study of NGRI patients indicated that only 20% were legitimately mentally ill, and thus not culpable. Another 50% had some neurotic or psychotic tendencies but no causal relationship could be discerned between their mental states and the crimes they committed, and thus they should have been found culpable. The remaining 30% of the NGRI patients studied showed *no* signs of mental illness. A. Robey & E. Pogany, The NGRI Commitment and *McQuillan* (Sept. 15, 1974) (unpublished Department of Mental Health study) (on file with the *Journal of Law Reform*).

29. THIRD ANALYSIS OF MICH. H.B. 4363, *supra* note 6, at 1 (indicating that a major goal of the GBMI statute was to prevent the release of persons found NGRI and thereby prevent a potential threat to public safety). According to Representative Rosenbaum, the GBMI statute was specifically designed "to circumvent the *McQuillan* decision." *Mental Health; Guilty But Mentally Ill: Hearings on H.B. 4363*, 78th Leg. (1975) (statement of Representative Rosenbaum). Most commentators acknowledge that the Michigan GBMI statute was a direct outgrowth of the *McQuillan* decision. *See* Watkins, *Guilty But Mentally Ill: A Reasonable Compromise for Pennsylvania*, 85 DICK. L. REV. 289 (1981); Note, *supra* note 6, at 188; *cf.* Robey, *Guilty But Mentally Ill*, 6 BULL. AM. ACAD. PSYCHIATRY & L. 374 (1978) ("If society feels generally, as it has in Michigan, that the new mental health and criminal rulings are eroding its protection against crime, a more structured disposition of the mentally ill offender may become commonplace.").

30. THIRD ANALYSIS OF MICH. H.B. 4363, *supra* note 6, at 1.

31. *Id.* at 2.

32. *See* MICH. COMP. LAWS ANN. § 768.36(3) (1982). Many proponents of the statute maintained that defendants would abuse a GBMI verdict without a mandatory minimum sentence because GBMI would offer the best possibility for early release. *See* THIRD ANALYSIS OF MICH. H.B. 4363, *supra* note 6, at 2. This seems unlikely given the strong stigma attached to defendants who seek or accept mental health care. *See supra* notes 16 & 17. Moreover, a GBMI defendant required to serve a minimum sentence may have no incentive to cooperate in psychiatric treatment, thus creating a high incidence of recidivism. *See* THIRD ANALYSIS OF MICH. H.B. 4363, *supra* note 6, at 2. No empirical research has been done comparing recidivism rates of GBMI defendants with those of defendants found guilty.

Legislators supporting the statute further contended that it would greatly simplify jury deliberation.[33] Because there is a tendency for jurors to assume that a defendant who commits a particularly offensive crime "must be insane," juries often find such defendants NGRI.[34] Jurors, it was believed, mistakenly assumed that a dangerous person found NGRI would be committed for many years. The GBMI verdict was designed to give juries an alternative[35] that guaranteed that the defendant would not be released before a minimum term had been served.[36]

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33. THIRD ANALYSIS OF MICH. H.B. 4363, *supra* note 6, at 2. Critics argued that the GBMI verdict would actually confuse juries because the issue of insanity and legal responsibility was difficult enough without adding a new variable. *Id.*; *see also* Note, *supra* note 6, at 198-99. Critics also agreed that juries would be confused by use of the word *but* in the phrase "guilty but mentally ill," rather than the syntactically correct *and*, because the former implies that the GBMI verdict is a verdict of diminished responsibility when in effect it is not. *See* Schwartz, *supra* note 26, at 848 (arguing that a GBMI verdict is no different from the standard guilty verdict because no intermediate degree of criminal culpability is attached to the former by the addition of the words "but mentally ill"); *see also* People v. Long, 86 Mich. App. 676, 684, 273 N.W.2d 519, 523 (1978), *aff'd sub nom.* People v. Booth, 414 Mich. 343, 324 N.W.2d 741 (1982) ("In its substance, and in its penal consequences, a plea of guilty but mentally ill is a guilty plea."); Letter from Ralph Slovenko, Professor of Law and Psychiatry at Wayne State University, to the New York Times Editor, *reprinted in* N.Y. Times, July 12, 1982, at A14, col. 4 ("[Juries], thinking that G.B.M.I. is a compromise or middle ground, are hoodwinked. The verdict 'guilty but mentally ill' could just as well be 'guilty but cirrhosis.' ") [hereinafter cited as Slovenko Letter]. A number of writers have argued that juries may abuse the GBMI verdict by compromising between guilty and NGRI. Corrigan & Grano, *1976 Annual Survey of Michigan Law: Criminal Law*, 23 WAYNE L. REV. 473, 479 (1977); Note, *Insanity — Guilty But Mentally Ill — Diminished Capacity: An Aggregate Approach to Madness*, 12 J. MAR. J. OF PRAC. & PROC. 351, 374 (1979) [hereinafter cited as Note, *An Aggregate Approach to Madness*]; Note, *Guilty But Mentally Ill: An Historical and Constitutional Analysis*, 53 J. URB. L. 471, 492 (1976) [hereinafter cited as Note, *An Historical Analysis*]. Such jury abuse has not, however, been shown. *See id.*

The jury compromise argument has been raised on the appellate level in only two cases. The appellate panels rejected the argument in both cases, stating that they did "not find evidence of the jury being misled into returning a compromise verdict or of being improperly instructed." *See* People v. Linzey, 112 Mich. App. 374, 377, 315 N.W.2d 550, 551 (1981); People v. Thomas, 96 Mich. App. 210, 221, 292 N.W.2d 523, 527 (1980). One proposed solution for this confusion is the adoption of a bifurcated trial where the jury would first determine the defendant's criminal responsibility; if the defendant was found guilty, the jury would separately determine the question of mental illness. *See* Brief in Support of Application for Leave to Appeal at 9, People v. Boyd, No. 68636 (Mich., filed Jan. 5, 1982); *cf.* Kaufman, *supra* note 5, at 20 (proposing bifurcated trial in which jury determines guilt and judge decides whether defendant possessed the mental capacity necessary to warrant punishment as a criminal).

34. *See* THIRD ANALYSIS OF MICH. H.B. 4363, *supra* note 6, at 2. Many commentators believe that the decision in an insanity acquittal has more to do with the jury's state of mind than with the defendant's. *See, e.g.*, Lauter, *supra* note 5, at 2, col. 2 ("When faced, for example, with a woman accused of infanticide, 'we do not want to understand the thing; it is so horrible we say, "It's crazy." ' ") (quoting psychiatrist Thomas Szasz).

35. Many GBMI critics believe that the verdict is a superfluous alternative. An insane defendant should be acquitted, they note, because "such a defendant did not know that an offense was wrong, or could not resist the impulse to commit the offense . . . ." THIRD ANALYSIS OF MICH. H.B. 4363, *supra* note 6, at 2. Conversely, defendants who knew that an offense was wrong and could have resisted committing the offense should be found guilty. Mental illness less than insanity should thus be irrelevant at trial. If a convict is mentally ill, psychiatric treatment is already required by law. *Id.*; *see* Schwartz, *supra* note 26, at 848-49; Note, *supra* note 6, at 198.

36. THIRD ANALYSIS OF MICH. H.B. 4363, *supra* note 6, at 2. The emphasis of the com-

Thus, the legislature outlined the purpose of the GBMI statute as twofold: to protect society from dangerous individuals who might otherwise be found NGRI and subsequently released under *McQuillan*,[37] and to simplify jury deliberations in cases involving the insanity defense.[38] To achieve these purposes, legislators designed the GBMI verdict to allow juries to provide mentally ill defendants with mental health treatment while ensuring penal detention of defendants following their in-patient treatment for mental illnesses.

C. *Operation of the GBMI Statute*

Under existing law, a defendant must be found NGRI if, as a result of "mental illness" or "mental retardation," he "lacks substantial capacity either to appreciate the wrongfulness of his conduct or to conform his conduct to the requirements of law."[39] The GBMI statute, by contrast, requires that a defendant be adjudicated GBMI if it is found beyond a reasonable doubt that he (1) is guilty of an offense,

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mentary to the recommendation of the Federal Attorney General's Task Force on Violent Crime is almost exclusively on the soothing effect a GBMI statute would have on juries:

> [T]here are defendants who appear to be suffering from mental illness but from a type of mental illness that may not significantly effect their ability to obey the law. Such a person presents juries with the difficult choice of either making a finding of guilty, even though the jury may feel compassion because of the defendant's mental problems, or not guilty by reason of insanity, even though the person appears to be able to appreciate the criminal nature of his conduct . . . .
>
> . . . .
>
> [A GBMI statute] would enable federal juries to recognize that some defendants are mentally ill but that their mental illness is not related to the crime they committed or their culpability for it. It would also enable a jury to be confident that a defendant who is incarcerated as a result of its verdict will receive treatment for that illness while confined.

U.S. DEPT. OF JUSTICE, *supra* note 14, at 54.

A common objection to this aspect of the GBMI statute is that in difficult cases juries will use it as an "intermediate verdict or 'escape hatch.' " Robey, *supra* note 29, at 380. Because the charge to the jury includes the post-verdict disposition of the defendant, the jury's concern that the defendant might be released following his 60-day observation period could lead them to a GBMI verdict even though they believe he was not culpable. *Id.*

37. *See* THIRD ANALYSIS OF MICH. H.B. 4363, *supra* note 6, at 1. The Michigan Supreme Court, in its only case to date dealing with the GBMI statute, stated that the Michigan legislature's goal in passing the statute was to assure supervised mental health treatment for the mentally ill persons convicted under state law, in the "humane hope of restoring their mental health." People v. McLeod, 407 Mich. 632, 663-64 (1980). This seems disingenuous. The statute does not address a defendant's present mental condition and need for treatment. Instead, it requires the jury to find the defendant mentally ill, but not legally insane, at the time of the offense. This time differential implies that the purpose of the GBMI statute was not to safeguard the mental health of defendants, but to encourage juries to adopt GBMI verdicts to ensure that dangerous people would be confined from the public.

38. *See* THIRD ANALYSIS OF MICH. H.B. 4363, *supra* note 6, at 1.

39. MICH. COMP. LAWS ANN. § 768.21a(1) (1982). The Michigan definition of insanity is essentially the same as the model definition originally proposed by the American Law Institute. *See* MODEL PENAL CODE § 4.01(1) (Proposed Official Draft 1962).

(2) was mentally ill at the time of the commission of that offense, and (3) was not legally insane at the time of the commission of that offense.[40] The new statute defines mental illness as "a substantial disorder of thought or mood which significantly impairs judgment, behavior, capacity to recognize reality, or ability to cope with the ordinary demands of life."[41]

A defendant must raise the insanity defense to be found GBMI.[42] Once the insanity defense is raised, the defendant must be referred to the Center for Forensic Psychiatry ("Forensic Center")[43] for a

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40. MICH. COMP. LAWS ANN. § 768.31(1) (1982).

41. *Id.* § 330.1400a.

The statutory definitions of "insanity" and "mental illness" have been attacked in a number of cases. Several defendants have argued that the definitions overlap and that the irrational classifications that result are a violation of the defendant's equal protection rights. *See, e.g.*, People v. Rone (On Second Remand), 109 Mich. App. 702, 716, 311 N.W.2d 835, 841 (1981); People v. Ramsey, 89 Mich. App. 468, 472, 280 N.W.2d 565, 566 (1979); People v. Sorna, 88 Mich. App. 351, 359-60, 276 N.W.2d 892, 896 (1979). Some commentators agree:

> [I]t is hard to imagine "a substantial disorder of thought or mood which significantly impairs judgment, behavior, capacity to recognize reality or ability to cope with the ordinary demands of life" that may not also be a substantial incapacity "either to appreciate the wrongfulness of . . . conduct or to conform . . . conduct to the requirements of law."

Note, *supra* note 6, at 196; *accord* Note, *supra* note 3, at 550.

The Michigan Supreme Court put this argument to rest: "We think this classification rationally furthers the legislative object of providing supervised mental health treatment and care to guilty but mentally ill defendants who are placed on probation." People v. McLeod, 407 Mich. 632, 664, 288 N.W.2d 909, 919 (1980). *See also* People v. Darwall, 82 Mich. App. 652, 661, 267 N.W.2d 472, 476 (1978); People v. Jackson, 80 Mich. App. 244, 246, 263 N.W.2d 44, 45 (1977); People v. Sorna, 88 Mich. App. at 360, 276 N.W.2d at 896; Note, *An Historical Analysis, supra* note 33, at 491. Cases since *McLeod* have summarily rejected similar constitutional attacks. *See, e.g.*, People v. Rone (On First Remand), 101 Mich. App. 811, 825, 300 N.W.2d 705, 712 (1980).

Several other constitutional arguments have been aimed at the GBMI verdict; all have been rejected by the courts. For example, it has been argued that the GBMI statute violates the "title-object" clause of the Michigan Constitution, which declares that "no law embrace more than one object, which shall be expressed in its title." MICH. CONST. art. 4, ¶ 24. This argument was rejected. *See* People v. Sharif, 87 Mich. App. 196, 199, 274 N.W.2d 17, 19 (1978); *accord* People v. Wilsie, 96 Mich. App. 350, 354, 292 N.W.2d 145, 147 (1980). Courts have also rejected arguments that the combination of NGRI and GBMI verdicts unconstitutionally shifts the burden of proof to the defendant, *see* People v. Darwall, 82 Mich. App. at 659, 267 N.W.2d at 475, and that a finding of GBMI is inconsistent with the intent requirement of first-degree murder, *see* People v. Thomas, 96 Mich. App. 220, 222, 292 N.W.2d 523, 528 (1980); *see also* People v. Linzey, 112 Mich. App. 374, 378, 315 N.W.2d 550, 552 (1981).

42. MICH. COMP. LAWS ANN. § 768.20a(1) (1982). A defendant intending to raise the insanity defense must notify the prosecutor not less than 30 days before the date set for the trial or "at such other time as the court directs." *Id.*

Defendants have claimed, unsuccessfully, that NGRI and GBMI are irrational classifications because the GBMI verdict may only arise when the defense of insanity is raised. People v. Rone (On First Remand), 101 Mich. App. 811, 825, 300 N.W.2d 705, 712 (1980); People v. Darwall, 82 Mich. App. 652, 661, 267 N.W.2d 472, 476 (1978); People v. Jackson, 80 Mich. App. 244, 245, 263 N.W.2d 44, 44-45 (1977).

43. The Forensic Center was established in 1966 and is a facility of the Department of Mental Health. *See* MICH. COMP. LAWS ANN. § 330.1128 (1982). The Center is a maximum security facility located ten miles south of Ann Arbor, Michigan on the grounds of the Ypsilanti Regional

psychological examination of criminal responsibility.[44] At trial, the judge must instruct the jury as to the verdicts of guilty, GBMI, NGRI, and not guilty.[45]

A defendant may also plead GBMI.[46] Two elements must exist for

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Psychiatric Hospital. The Center handles patients on an inpatient and outpatient basis. A large part of the Center's work involves clinical evaluations performed at the request of Michigan state courts. The evaluations include competency to stand trial, criminal responsibility, and the necessity of involuntary hospitalization following an NGRI verdict. *See* Appendix B, Chart A.

44. MICH. COMP. LAWS ANN. § 768.20a(2) (1982). The examination may be conducted either in the jail in which the defendant is being held pending trial or at the Forensic Center. *Id.* If the defendant is free on bail, he must make himself available for examination; failure to appear for the examination may result in commitment without a hearing. *Id.* Michigan law requires that the Forensic Center's evaluation be sent to the prosecutor and defense counsel. *Id.* § 768.20a(6). In addition, the defendant is entitled to an independent psychiatric evaluation at his own expense or, if indigent, at the expense of the county. *Id.* § 768.20a(3). The prosecuting attorney is also entitled to an independent examination of the defendant.

The criminal responsibility evaluation typically includes two parts. First, the Minnesota Multiphasic Personality Inventory ("MMPI") is administered. The MMPI compares characteristics and behavior of the defendant to previous research which has identified and classified similar characteristics and behavior for other individuals. The MMPI also identifies subjects attempting to "cheat" in an attempt to appear insane. *See* J. GRAHAM, THE MMPI: A PRACTICAL GUIDE (1977). In addition to the MMPI, a member of the Forensic Center staff conducts an interview with the defendant. The interview consists of the defendant's personal history and account of the alleged crime. Based upon the MMPI and interview, the staff member typically declares the defendant to be either criminally responsible or not responsible. *See* Appendix B, Chart A.

Michigan's use of the state-operated Forensic Center is not uniformly followed by other states. Indiana, which possesses GBMI and insanity statutes very similar to Michigan's, requires that the court appoint two or three "disinterested" psychiatrists to examine the defendant. IND. CODE ANN. § 35-36-2-2 (Supp. 1982).

45. *See* MICH. COMP. LAWS ANN. § 768.29a(2) (1982). The Michigan courts have recognized that a GBMI instruction must be given whenever the insanity defense is presented at trial. People v. Ritsema, 105 Mich. App. 602, 612, 307 N.W.2d 380, 385 (1981) (holding that a GBMI instruction must be given even if the defendant does not want the instruction); People v. Mikulin, 84 Mich. App. 705, 709, 270 N.W.2d 500, 501-02 (1978) (stating that a GBMI instruction must be given).

The content of the instructions to the jury has also been litigated on the appellate level. The defendant on appeal has usually argued that the judge should not have instructed the jury on the post-verdict disposition of the defendant under the NGRI and GBMI verdicts. The Michigan courts have generally upheld the right of the trial judge to instruct as to the post-trial effect of these verdicts. *See* People v. Rone (On Second Remand), 109 Mich. App. 702, 712-13, 311 N.W.2d 835, 840 (1981); *see also* People v. Linzey, 112 Mich. App. 374, 378, 315 N.W.2d 550, 552 (1981); People v. Thomas, 96 Mich. App. 210, 222, 292 N.W.2d 523, 528 (1980); People v. Tenbrink, 93 Mich. App. 326, 330, 287 N.W.2d 223, 224-25 (1979). *Contra* People v. Samuelson, 75 Mich. App. 228, 234, 254 N.W.2d 849, 852 (1977).

Michigan Criminal Jury Instructions include instructions for the disposition of defendants found NGRI or GBMI. The GBMI disposition instruction reads:

> (14) If you find the defendant committed the crime while responsible but mentally ill, then you may return a verdict of guilty but mentally ill. This verdict may be of the crime charged [or any lesser included offense].
>
> (15) In most respects a verdict of guilty but mentally ill is the same as a verdict of guilty. The defendant may be imprisoned for the same period of time as he would if he were found guilty. [Alternatively, he could be placed on probation for a period of time the same as or greater than he would be if found guilty]. The distinction is that the verdict of guilty but mentally ill imposes upon the Department of Corrections an

the judge to accept a plea of GBMI: the defendant must (1) assert the insanity defense and (2) waive his right to a trial.[47]

After accepting a GBMI plea or after conviction under a GBMI verdict, the court "shall impose any sentence which could be imposed pursuant to law" for the particular offense.[48] If the defendant is sen-

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obligation to provide appropriate psychiatric treatment during the period of imprisonment or while the defendant is on probation.

Special Committee on Standard Criminal Jury Instructions, State Bar of Michigan, *Michigan Criminal Jury Instructions*, CJI 7:8:10 (1977) (brackets in original to allow for trial court variance).

The GBMI instruction has also been used to correct an erroneous NGRI instruction under the rationale that, because a proper GBMI instruction was given and because the jury returned a guilty verdict, no mental illness existed; therefore, the defendant could not have been found NGRI. *See* People v. Crawford, 89 Mich. App. 30, 36, 279 N.W.2d 560, 564 (1979). *Contra* People v. Girard, 96 Mich. App. 594, 602, 293 N.W.2d 639, 643 (1980).

46. *See* MICH. COMP. LAWS ANN. § 768.36(2) (1982).

47. *Id.* A judge may not accept a GBMI plea until he has examined the reports prepared by the Forensic Center and has held a hearing on the issue of the defendant's mental state at the time of the crime. *Id.* The reports prepared by the Forensic Center are to be made part of the record. *Id.* Failure to obtain an insanity examination invalidates the GBMI plea. People v. Seefeld, 95 Mich. App. 197, 199, 290 N.W.2d 124, 125 (1980). The Forensic Center report need not conclude that the defendant was mentally ill at the time of the offense to support a GBMI plea. People v. Bazzi, 113 Mich. App. 606, 609, 318 N.W.2d 484, 484-85 (1981); *cf.* People v. Fultz, 111 Mich. App. 587, 314 N.W.2d 702 (1981) (holding that a trial court must make an explicit finding that the defendant was not insane at the time of the offense before accepting a GBMI plea).

The Michigan Supreme Court has also held that a plea of GBMI, like a guilty plea, requires direct examination of the defendant; however, if the defendant forgets details of the crime, the factual basis for the plea may be established by reference to transcripts of a preliminary examination. *See* People v. Booth, 414 Mich. 343, 348-49, 324 N.W.2d 741, 743 (1982). The trial court may allow external evidence to establish an adequate factual basis for the plea. *Bazzi*, 113 Mich. App. at 608-09, 318 N.W.2d at 485.

48. MICH. COMP. LAWS ANN. § 768.36(3) (1982). The Michigan Supreme Court has held that prior to sentencing, the trial judge must obtain a report from the Forensic Center on the defendant's present mental condition, at least in those cases in which the defendant is placed on probation. People v. McLeod, 407 Mich. 632, 658, 288 N.W.2d 909, 917 (1980). The court found the requirement of an examination to be implied in the probation section of the statute, MICH. COMP. LAWS ANN. § 768.36(4) (1982):

> This statutory provision specifically requires the sentencing judge who places on probation a defendant who has been found guilty but mentally ill to make treatment a condition of probation upon the recommendation of the Center for Forensic Psychiatry. Practically speaking, no such recommendation could be made until the center has been afforded the opportunity to evaluate the defendant's mental health and to determine the need for treatment, if any.

McLeod, 407 Mich. at 658, 288 N.W.2d at 917. Although the court based this language on the probation section of the statute, the explicit holding makes no distinction between incarceration and probation. One court has distinguished between incarceration and probation and held that incarceration requires no such report. People v. Linzey, 112 Mich. App. 376, 379-80, 315 N.W.2d 550, 553 (1981).

The trial court may also cure any inconsistent verdicts at the sentencing stage. People v. Philpot, 98 Mich. App. 257, 296 N.W.2d 229 (1980). In *Philpot*, the defendant was found guilty of assault with intent to commit murder and guilty but mentally ill of possession of a firearm in the commission of a felony. The court held that interference with the jury verdicts was permissible in this case, and that the proper remedy was "to add on the 'but mentally ill' language to his assault conviction." *Id.* at 260, 296 N.W.2d at 230.

In contrast to *Philpot*, the appellate panel in People v. Blue, 114 Mich. App. 137, 318 N.W.2d

tenced to the Department of Corrections on a GBMI verdict or plea, he must be evaluated and receive "such treatment as is psychiatrically indicated," in either the Department of Corrections or the Department of Mental Health.[49] If treatment is not indicated or when, after treat-

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498 (1982), did not cure inconsistent verdicts, but instead held that, due to concurrent sentences, the inconsistency was of no significance. *See id.* at 142, 318 N.W.2d at 499-500.

49. MICH. COMP. LAWS ANN. § 768.36(3) (1982).

A temporarily successful challenge to the GBMI statute involved the claim that the Department of Corrections would be unable to provide the treatment required under the statute. After holding a hearing on the ability of the Department of Corrections and the Department of Mental Health to provide treatment, a Michigan trial court found the GBMI statute "legally inert" due to the inability of the departments to provide treatment. *See* People v. McLeod, No. 76-01672 (Detroit Recorder's Ct., Mich., Sept. 21, 1976), *rev'd*, 407 Mich. 632, 288 N.W.2d 909 (1980). To determine whether the defendant would receive the necessary treatment, the trial judge took testimony from a psychiatrist with the Department of Corrections, a psychiatrist with the Department of Mental Health and from a private practitioner.

According to the trial court's findings, there was only one full-time psychiatrist for a prison population of 12,000 in the Department of Corrections. Treatment consisted mainly of crisis intervention, generally only for those patients deemed psychotic or suicidal. The Department of Corrections psychiatrist indicated that the defendant would come to the doctor's attention only if the defendant was an extreme management problem. People v. McLeod, 407 Mich. 632, 667-68 n.5, 288 N.W.2d 909, 921 n.5 (1980) (Levin, J., concurring). On the basis of this testimony, the trial court held the GBMI statute unconstitutional.

The Michigan Supreme Court considered the trial court's ruling premature and stated that it was "logically impossible" to say that treatment will not be provided because the needs of the defendant cannot be determined until the defendant is evaluated. *See* People v. McLeod, 407 Mich. at 651-54, 288 N.W.2d at 914-15. The holding in *McLeod* parallels a number of court of appeals rulings that any evaluations of the availability of treatment by the sentencing judge are premature; if the treatment is not provided, the proper remedy is a writ of mandamus to the Department of Corrections or the Department of Mental Health. *See, e.g.*, People v. Linzey, 112 Mich. App. 374, 377, 315 N.W.2d 550, 552 (1981); People v. Willsie, 96 Mich. App. 350, 354-55, 292 N.W.2d 145, 147 (1980); People v. Tenbrink, 93 Mich. App. 326, 331, 287 N.W.2d 223, 225 (1979); People v. Sorna, 88 Mich. App. 351, 362, 276 N.W.2d 892, 897 (1979).

Ironically, the supreme court in *McLeod* did not condemn the sentencing court's review of the proposed treatment, but only objected to the procedure used by the trial court in evaluating the future treatment:

> In order for the sentencing court to have properly made the findings it purported to make concerning the actual availability and provision of treatment for defendant, it must first have had the responsible departments before it as parties to a legal proceeding, represented by counsel, and afforded a full and fair opportunity to develop a factual record to determine at least the following:
>
> 1) Whether treatment was psychiatrically indicated for defendant;
> 2) If so, the type and length of the treatment that was psychiatrically indicated;
> 3) Whether that treatment was being provided or would be provided; and
> 4) If not, the reasons for the failure to provide such treatment.

407 Mich. at 653, 288 N.W.2d at 914-15. Although this passage conflicts with the holding that "the sentencing court erred in attempting to determine whether that treatment would in fact be provided," *id.* at 652, 288 N.W.2d at 914, the court apparently is willing to leave the door open to a proceeding in which the Department of Corrections and the Department of Mental Health are fully represented. Only in this type of proceeding would it be possible to conclude that the GBMI statute is "legally inert."

The argument that due process is violated by the failure to provide a hearing before the defendant receives treatment has been rejected. *See* People v. Sharif, 87 Mich. App. 196, 200, 274 N.W.2d 17, 19 (1978).

The issue of providing hearings before a GBMI convict is transferred to a mental institution

ment, the defendant is discharged from the mental health facilities, he is sent to the Department of Corrections to serve the balance of the sentence.[50]

The GBMI statute also provides that treatment may be a condition of probation.[51] The period of probation should be at least five years unless the judge, after examining the psychiatric report, deems a shorter period to be appropriate.[52]

As the statute is written, the NGRI verdict remains an option for juries. Legislators apparently believed that juries would use the GBMI verdict despite the continued availability of the NGRI verdict.

II. AN EMPIRICAL ANALYSIS OF THE USE AND EFFECT OF THE GBMI VERDICT IN MICHIGAN

A. Method for Empirical Study

The sample GBMI, NGRI, and Guilty groups evaluated in this study were obtained through different channels. The names of all adult male GBMI defendants[53] who received prison sentences between 1975 and 1981 were obtained from Jackson State Penitentiary and the Riverside Correctional Psychiatric Center.[54] These names were matched against

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has provoked disagreement among legal writers. One commentator, following the reasoning in *Sharif*, has argued that "[a] guilty party has no right to freedom. He is under state control and has little to say concerning where his sentence shall be served." Note, *An Historical Analysis, supra* note 33, at 492. In response, another writer has argued that the liberty of the defendant is not the sole interest involved because the commitment to a mental institution attaches an additional "distinctive stigma" to the defendant. Note, *An Aggregate Approach to Madness, supra* note 33, at 369 (quoting Miller v. Vitek, 437 F. Supp. 569, 573 (D. Neb. 1977), *vacated and remanded on the issue of mootness*, 436 U.S. 407 (1978)). *See also* Note, *supra* note 3, at 548.

50. *See* MICH. COMP. LAWS ANN. § 768.36(3) (1982).

51. *Id.* § 768.36(4).

52. *Id.*

53. This study is limited to the class of adult males, which constitutes approximately 75% of the total arrests in Michigan over the past 10 years. No females were included in this study due to administrative difficulty in obtaining the names of women found GBMI. It is believed, however, that the number of women found GBMI is extremely small. Telephone interview with Ms. Donna Bergen, Superintendent of the Huron Valley Women's Facility (March 7, 1983).

All subsequent use of the word "defendants" refers to adult male defendants. In compiling "adults arrested," the Michigan State Police define "adults" as individuals 16 years of age or older. Telephone interview with Ms. Alice Boomer, Clerk at the Uniform Crime Reports Section of Michigan State Police Criminal Records Center (Oct. 26, 1982). Under Michigan law, however, an adult is an individual who has attained the age of 18 years. *See* MICH. COMP. LAWS ANN. § 722.52 (1982). All statistics of adults arrested are taken from records compiled by the Michigan State Police. *See infra* note 66. All GBMI and NGRI statistics, however, are for individuals who are at least 18 years old. Thus, the NGRI figures offered as percentages of the total population of adults arrested are slightly — but consistently — lower than the actual number, because they do not include any 16- or 17-year-old individuals found NGRI.

54. All GBMI figures were provided by Dr. John Prelesnik, Superintendent of the Reception

records of defendants tested for insanity at the Forensic Center.[55] The Forensic Center evaluated 188 of the 203 defendants found GBMI between 1975 and 1981; the remaining 12% (25) evidently were not evaluated despite statutory requirements.[56] Demographic statistics were compiled from the records of 70% (141) of those GBMI defendants evaluated by the Forensic Center.[57] This data forms the base of the demographic analysis in Part E. Although defendants adjudicated GBMI may be either sentenced or placed on probation, records have not been kept of defendants on probation; thus, it is impossible to determine the size or characteristics of this portion of the GBMI group.[58]

The names and histories of the 316 defendants acquitted as insane between 1976 and 1981 were obtained from the Forensic Center.[59] Demographic statistics were compiled from the records of 96% (302) of these defendants.

Data collected concerning the adjudication of NGRI and GBMI defendants and on the use of expert psychiatric witnesses is based on responses to questionnaires mailed to sixty randomly selected attorneys who represented defendants adjudicated NGRI after 1975[60] and sixty randomly selected attorneys who represented defendants in the sample of 141 found GBMI after 1975.[61]

The Guilty group was composed of 211 defendants randomly gathered

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and Guidance Center at Jackson State Penitentiary, and Mr. Larry Levy, Admissions Assistant at the Riverside Correctional Psychiatric Center.

55. The Forensic Center is mandated by statute to evaluate all defendants raising the insanity defense and all defendants adjudicated NGRI. MICH. COMP. LAWS ANN. § 330.2050(1) (1982). The Forensic Center has kept records on defendants found GBMI since 1975 and defendants found NGRI since 1972. There are no records of statewide NGRI totals prior to 1972. During these years, individual hospitals kept their own statistics, many of which have now been discarded. Consequently, it is most difficult to gauge accurately the annual number of NGRI acquittees in Michigan prior to 1972.

56. All GBMI defendants in Michigan are required to be evaluated by the Forensic Center. MICH. COMP. LAWS ANN. § 768.20(a)(1)-(2) (1982).

57. This data was collected from the medical record files at the Forensic Center. Demographic data was not included for those defendants whose files were incomplete or unavailable.

58. Because the insanity defense is raised most often in serious crimes, and because raising the insanity defense is a prerequisite to being found GBMI, it seems doubtful that a large percentage of those defendants found GBMI are placed on probation. *See* Appendix A, Table K. It is possible, however, that those defendants who are placed on probation exhibit different characteristics than the group sampled, and if surveyed might have altered the conclusions drawn regarding the characteristics of the GBMI group.

59. All NGRI names and statistics were provided by Mr. Jim Romans, Director of Forensic Services at the Forensic Center.

60. Responses to this questionnaire are on file with the *Journal of Law Reform*.

61. Responses to this questionnaire are on file with the *Journal of Law Reform*. The randomness of this and any other random selection processes noted and not separately footnoted was determined by dividing the number of cases in the sample (here, 141 GBMI defendants) by the number of random samples desired (here, 60). This ratio (approximately 2:1) designates how many cases in the computer print-out of the full sample should be skipped. In this case roughly every other defendant was skipped. Those defendants not skipped were matched with their respective lawyers, and these lawyers were surveyed.

from a pool of defendants tested for criminal responsibility at the Forensic Center between 1976 and 1981 and not subsequently found GBMI or NGRI.[62] Because some of these defendants might later have been found innocent or had their charges dropped, questionnaires regarding the adjudication of each defendant were mailed to the courts at which they were tried. Of the 139 responses received,[63] 95% of the defendants had plea-bargained or been found guilty.[64] Thus, a high proportion of those defendants placed in the Guilty group were actually found guilty at trial. Demographic statistics were obtained from Forensic Center records on all 211 defendants in the Guilty group.

B. Effect of the GBMI Verdict on the Incidence of the NGRI Verdict

Prior to the inception of the GBMI statute, all defendants who plea-bargained or went to trial in Michigan received one of three verdicts: guilty, not guilty, or not guilty by reason of insanity.[65] Adding the GBMI verdict necessarily displaced some number of defendants in one or more of these other groups. The effect the GBMI verdict has had on the NGRI verdict was estimated by comparing the proportion of defendants found NGRI before and after the introduction of the GBMI verdict.[66]

As a starting point, the percentage of individuals found NGRI and GBMI constitutes an extremely small part of the group of all arrestees[67] — so small that it is a bit surprising how much attention the defenses have received. Since the enactment of the GBMI statute in 1975, only

62. This group was selected through a matching process with the GBMI group: the number of GBMI defendants was calculated for each year, and a matched random sample was drawn from those defendants found guilty in corresponding years. A few extra guilty defendants were added to each year to expand the sample size; this was done purely for administrative convenience in the event some files proved to be unavailable. The demographics presented for the Guilty group may not be entirely representative, however, because defendants who seek testing at the Forensic Center before pleading guilty or being found guilty may exhibit somewhat different characteristics than defendants who never seek to be tested at the Forensic Center. It seems likely, for example, that many defendants who seek Forensic Center testing are individuals who have previously had greater than average contact with mental health institutions.

63. These responses are on file with the *Journal of Law Reform*.

64. Of the seven defendants who were not found guilty, five were found not guilty, one was found GBMI, and one was found NGRI but never reported back to the Forensic Center. Two other defendants were excluded because they had not yet been adjudicated.

65. *See* 1927 Mich. Pub. Acts 175, c. VIII, § 29a.

66. *See* Appendix A, Table A. Because a statistically significant analysis that compares raw numbers, as opposed to percentages of totals, can be misleading, Michigan State Police records of annual arrests were also gathered to determine the percentages of defendants found NGRI out of the total number arrested. All data on adult males arrested were provided by Ms. Alice Boomer, Clerk at the Uniform Crime Reports Section of the Michigan State Police Criminal Records Center.

67. *See* Appendix A, Table A.

241 defendants have plea-bargained GBMI[68] or been found GBMI by a judge or jury, ranging from a low of 0.004% (11) in 1976 to a high of 0.023% (51) in 1977. (A percentage rate of 0.023 means a rate of only 23 GBMI verdicts for every 100,000 arrestees.) In the four years prior to the implementation of the GBMI verdict, 237 of the adult males charged with crimes were adjudicated NGRI: an average of 0.025% (59) per year. Since the first full year of the GBMI statute in 1976, 381 of the adult males arrested were adjudicated NGRI — an average of 0.026% (54) per year. During these years the proportion of defendants found NGRI out of the total number raising the defense has remained relatively constant, ranging from a low of 5% (1981) to a high of 8.4% (1977).[69] Thus, despite the change in the law, the rate of NGRI verdicts has remained stable over a ten-year period.[70] This consistency over time reveals that judges and juries are continuing to find defendants NGRI as often as they did prior to the GBMI alternative, and suggests that they are rarely entering the new verdict when they would previously have found a person NGRI.

C. Adjudication of NGRI and GBMI Defendants

The legislative history of the GBMI statute indicates that the secondary purpose of the new verdict was to simplify jury deliberations in insanity cases.[71] To evaluate the extent to which this goal has been achieved and juries have adopted the new verdict, it is necessary to examine how GBMI dispositions have been reached since 1975. This can be achieved by analyzing the percentage of a sample group of GBMI defendants who obtained their dispositions through plea-bargains, bench trials, and jury trials.[72] As a point of reference, a similar study was done with a group of NGRI defendants.[73]

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68. This figure does not include defendants placed on probation.

69. *See* Appendix A, Table B; *see also* Appendix B, Chart A.

70. The consistency in NGRI verdicts during these years does not, in itself, prove that the new verdict has not depleted the number of defendants who might have otherwise been found NGRI. It is possible, for example, that in the absence of the GBMI verdict the number of insanity acquittals between 1975 and 1982 would have increased. Examination of demographic data, however, reveals that defendants found GBMI more closely resemble defendants found guilty than defendants found NGRI. *See infra* notes 85-128 and accompanying text.

71. *See* THIRD ANALYSIS OF MICH. H.B. 4363, *supra* note 6, at 2.

72. *See* Appendix A, Table C.

73. This study was based on responses from questionnaires mailed to 120 defense attorneys. Half were randomly selected from those attorneys who had represented defendants found GBMI, and half were randomly selected from attorneys who had represented defendants found NGRI since 1975. Thirty-six GBMI attorneys and 38 NGRI attorneys responded. Among the NGRI attorneys, five responded twice. Among the GBMI attorneys, one responded twice. All attorneys surveyed were successful in their respective cases; thus, those responding do not represent a more successful — and thereby representationally skewed — sample of those attorneys solicited.

Although all defendants found NGRI are necessarily adjudicated through courtroom proceedings, the evidence indicated that roughly 60% of those found GBMI received their verdicts through a plea-bargaining process.[74] This finding is, on the surface, quite surprising, because a GBMI verdict does not affect a judge's sentencing powers. Consequently, it seems pointless for the defendant to seek the verdict through a plea-bargain. Equally important, defendants found GBMI after trial were evenly divided between bench and jury trials.[75] This discovery is particularly interesting because the GBMI verdict was primarily designed as an extra option for the use of juries, yet in practice appears to be used just as often by judges. Thus, although the Michigan legislature created the verdict to simplify jury decision-making, only one in five defendants found GBMI receive that verdict from a jury.

D. Use of Expert Psychiatric Witnesses in NGRI and GBMI Trials

To be found NGRI or GBMI, a defendant must first plead insanity and undergo a psychiatric examination at the Forensic Center.[76] At trial, a Forensic Center examiner will testify for or against an NGRI acquittal. Often, if the Forensic Center testimony is expected to be against a defendant, the defendant will call a private psychiatrist to testify on his behalf. One way to gauge the influence of Forensic Center testimony is to compare the use of private psychiatrists and Forensic Center examiners as expert witnesses in NGRI and GBMI trials.[77]

Defendants found NGRI called Forensic Center examiners to testify in bench trials in 74% of their cases, but never called them to testify in jury trials.[78] It is actually quite logical that NGRI defendants would not call Forensic Center examiners to testify at jury trials. Ninety percent of those defendants found NGRI were adjudicated in non-jury trials,[79] often through a quasi-plea-bargaining process.[80] If Forensic Center testimony was supportive, the defense often convinced the prosecutor to stipulate to the Forensic Center report and merely go through a pro forma bench trial.[81]

Defendants found GBMI, on the other hand, used Forensic Center examiners in bench trials only about half as often as NGRI defendants, but occasionally asked an examiner to take the stand in a jury trial.[82]

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74. *See* Appendix A, Table C.
75. *Id.*
76. *See* MICH. COMP. LAWS ANN. § 768.20a(1)-(2) (1982).
77. *See* Appendix A, Table D. The procedure for this study is explained *supra* note 73.
78. *See* Appendix A, Table D.
79. *See* Appendix A, Table C.
80. *See* Appendix A, notes to Table D.
81. *Id.*
82. *See* Appendix A, Table D.

Thus, it would generally appear that defendants found NGRI are more reliant upon favorable Forensic Center testimony in bench trials than defendants found GBMI.

There is less disparity between the GBMI and NGRI defendants' use of private psychiatrists as expert witnesses. In bench trials, the NGRI defendants called private psychiatrists to the stand 44% of the time and GBMI defendants used private psychiatrists 67% of the time.[83] At every jury trial, however, both groups used the testimony of private psychiatrists. These findings suggest that NGRI defendants may characteristically be more reliant upon expert testimony in bench trials, and that both NGRI and GBMI defendants rely heavily upon testimony from private psychiatrists in the absence of Forensic Center testimony.[84]

E. Demographic Analysis of GBMI, NGRI, and Guilty Groups

The persistent number of insanity acquittals following the adoption of the GBMI statute strongly suggests that the GBMI verdict has not fulfilled the expectations of the legislators who supported it. To further test this conclusion, demographic variables were recorded for each defendant in the GBMI, NGRI, and Guilty groups.[85] By examining these variables, it is possible to determine whether the GBMI group appears more similar to the Guilty group or to the NGRI group. If the GBMI group closely resembles the Guilty group, it would seem more likely that those defendants found GBMI would have been found guilty in the absence of the new verdict. The variables considered included: race, age,[86] location of the crime,[87] marital status,[88] education,[89] employment status,[90] occupation,[91] prior criminal charges,[92] alcohol and drug

83. *Id.*

84. Like the GBMI defendants, the prosecution employed Forensic Center testimony in about half the GBMI bench trials. In contrast, though the prosecution also employed Forensic Center testimony in about half the NGRI bench trials, NGRI defendants used testimony from the Forensic Center in three-quarters of the NGRI bench trials. Unlike either defendant group, the prosecution often used testimony from the Forensic Center in jury trials. *See* Appendix A, notes to Table D.

85. The Guilty group is a random sample of males raising the defense of insanity who were not found GBMI or NGRI. *See supra* notes 60-64 and accompanying text.

86. "Age" refers to the defendant's age at the time of the verdict.

87. "Location of the crime" refers to the county in which the defendant received the verdict.

88. "Marital status" refers to the defendant's status at the time of arrest.

89. "Education" refers to the highest level of education achieved by the defendant prior to the crime.

90. "Employment status" refers to the defendant's status at the time of arrest.

91. "Occupation" refers to the last job held by the defendant prior to the arrest. In many cases, this variable is based upon the defendant's own statement as to the last job held.

92. "Prior criminal charges" refers to the number of times the defendant has been charged with a crime prior to the existing charge. This figure typically came from a police report included in the defendant's files at the Forensic Center. In some cases, the figure was taken from the psychiatrist's report.

use,[93] prior psychiatric treatment,[94] prior Forensic Center referrals,[95] crimes charged,[96] and Forensic Center recommendation.[97]

At the outset, a comparison was made between the demographic data for the NGRI group and the Guilty group. By comparing these two groups, it was possible to determine which variables were most significant in differentiating between the verdicts. Discriminant analysis was used to determine the most important variables and to evaluate the designation of the significant variables. Following this comparison between the NGRI and Guilty groups, the demographic data for the GBMI group was analyzed, focusing on those variables found to be most significant in differentiating between the NGRI and Guilty groups.[98] Finally, by using the discriminant analysis of the NGRI and Guilty groups, prediction tests were developed and applied to the GBMI group to determine whether each GBMI defendant more closely resembled the NGRI group or Guilty group.

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93. "Alcohol and drug use" was derived from the psychiatrist's report on the defendant's criminal responsibility. This report typically included a reference to any alcohol or drug use. According to the Forensic Center, the psychiatrist's report makes reference to alcohol or drug use whenever the defendant reports at least "occasional" use. Telephone interview with Dr. Harley Stock, Staff Psychiatrist, Center for Forensic Psychiatry (Jan. 28, 1983). When the report made reference to any of the drugs listed, such use was recorded.

94. "Previous psychiatric treatment" is based upon the psychiatrist's report on criminal responsibility. If the report indicated any prior psychiatric treatment, including treatment on an outpatient basis, the treatment was recorded.

95. The Forensic Center examines individuals involved in the criminal justice system for a number of different reasons, including competency, criminal responsibility, and 60-day diagnostics for defendants in the Department of Corrections. The prior referrals variable includes each time the defendant has been examined by the Forensic Center for any of the above reasons prior to the arrest.

96. In many cases, the defendant was charged with multiple crimes. In each such case, the three most serious crimes were recorded.

97. Typically, defendants are recommended either criminally responsible or not responsible. *See* Appendix B, Chart A. Occasionally, a defendant will be recommended GBMI. For the purposes of this study, defendants recommended GBMI are included under the heading of "criminally responsible" for two reasons. First, a GBMI verdict, as a technical matter, declares the defendant to be criminally responsible. *See supra* note 44. Second, many staff members performing criminal responsibility evaluations choose only between the criminally responsible and not responsible recommendations. The category designated "other" includes cases in which no recommendation was given or in which staff members disagreed to the appropriate recommendation. *See supra* note 44.

98. One potential criticism of this approach is that, as a result of the adoption of the GBMI statute, the NGRI population may have changed with respect to the variables considered here. Studies by the Forensic Center, however, reveal that the demographic characteristics of the NGRI population have not changed since the adoption of the GBMI statute. A study published in 1975 examined the NGRI population at the Forensic Center for the period 1967-1972. *See* Cooke & Sikorski, *Factors Affecting Length of Hospitalization in Persons Adjudicated Not Guilty by Reason of Insanity*, 2 BULL. AM. ACAD. PSYCHIATRY & L. 251 (1975). A later study by the Forensic Center examined the NGRI population for the period September 1, 1974, to August 31, 1979, and concluded that the NGRI population was "quite similar" to the population of the earlier study. *See* Criss & Racine, *Impact of Change in Legal Standard for Those Adjudicated Not Guilty by Reason of Insanity 1975-1979*, 8 BULL. AM. ACAD. PSYCHIATRY & L. 261, 263 (1980).

1. Significant differences between the NGRI group and the Guilty group— As a first step in comparing the NGRI and Guilty groups, each variable was expressed in both real numbers and percentages for each group.[99] This simple two-way analysis produced statistically significant differences between the two groups for every variable except marital status, county size, occupation, comparisons between homicides and other crimes, and comparisons between crimes against the person and crimes against property.

The most significant distinctions between the NGRI and Guilty groups appeared in the defendants' prior contacts with mental health and criminal justice authorities. Although both groups had had substantial contact with mental health authorities, the NGRI group had significantly more contact with the Forensic Center,[100] and with psychiatric treatment in general.[101] On the other hand, the Guilty group was significantly more likely to have had previous criminal charges.[102]

The use of alcohol and marijuana was also much more prevalent in the Guilty group.[103] In addition, the Guilty group showed more use of "hard" drugs (illegal drugs other than marijuana).[104] The two groups did not differ significantly as to the crime charged, with one exception: a much higher percentage of the Guilty group was charged with sex-related crimes.[105] A number of other variables produced statistically significant distinctions. Defendants in the NGRI group were more likely to be black,[106] older,[107] and better educated,[108] but unemployed.[109]

All of these variables produced statistically significant distinctions. Nevertheless, further discriminant analysis showed the recommendation of the Forensic Center to be the single most important factor in determining the verdict received by the defendant. In 96% of the cases in which the defendant was later found guilty, the Forensic Center had previously determined that the defendant did not meet the requirements of the NGRI defense.[110] Similarly, in 84% of the cases in which the defendant was utlimately found NGRI, the Forensic Center determined that the defendant did meet the NGRI requirements.[111]

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99. *See* Appendix A.
100. $p = .0000$. *See* Appendix A, Table J. The p-value gives the probability that the distribution occurred by chance. Any value less than $p = .05$ is significant.
101. $p = .0000$. *See* Appendix A, Table J.
102. $p = .0001$. *See* Appendix A, Table H.
103. *See* Appendix A, Table I.
104. $p = .0105$. *See* Appendix A, Table I.
105. $p = .0000$. *See* Appendix A, Table K.
106. $p = .0002$. *See* Appendix A, Table E.
107. $p = .0005$. *See* Appendix A, Table E.
108. $p = .0073$. *See* Appendix A, Table G.
109. $p = .0060$. *See* Appendix A, Table G.
110. *See* Appendix A, Table L.
111. $p = .0000$. *See* Appendix A, Table L.

To test further the influence of the Forensic Center recommendation, two statistical prediction tests were developed.[112] For both tests an evaluation group of cases was randomly drawn from the NGRI and Guilty groups to evaluate the reliability of the tests.

First, a prediction test was developed based upon demographic variables other than the Forensic Center recommendation.[113] When this test was applied to the evaluation group, approximately 65% of the predictions for both the Guilty group and the NGRI group proved correct.[114] In contrast, by developing a prediction test based upon all the demographic data plus the Forensic Center recommendation, the predictions were much more successful: when applied to the evaluation group, 100% accuracy was achieved for both the Guilty group and the NGRI group.[115] Under this analysis, the Forensic Center recommendation proved to be the most significant variable.[116]

In sum, the NGRI and Guilty groups showed significant differences as to many variables. The most significant variables were previous psychiatric treatment, previous criminal justice contacts, alcohol and drug use, a sex-related criminal charge, and most important, the Forensic Center recommendation.

2. The GBMI group— The analysis of the GBMI demographic variables was conducted in two steps. First, the data for the GBMI group was compared to the corresponding data for the NGRI and Guilty groups as to those variables that showed a significant distinction between

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112. Linear discriminant analysis forms a rule for the assignment of cases to categories based upon the data of the individual cases. Specifically, the technique attempts to find that linear combination of variables which maximizes the difference between the results categories, e.g., Guilty or NGRI. Given the data from a new case, the rule formed through the linear combination can predict the ultimate category of that case. Validation of the rule can be derived from the application of the rule to cases in which the actual category is known.

113. The variables included in developing this prediction test were race, age, marital status, location of crime, education, employment status, previous criminal charges, previous psychiatric treatment, type of crime charged, and use of hard drugs.

114.

	Verdict	
Prediction	NGRI	Guilty
NGRI	9 (64.3%)	8 (33.3%)
Guilty	5 (35.7%)	16 (66.7%)

115.

	Verdict	
Prediction	NGRI	Guilty
NGRI	10 (100.0%)	0 (0.0%)
Guilty	0 (0.0%)	10 (100.0%)

116. $p = .0000$, *See* Appendix A, Table L. Further evidence of the importance of the recommendation variable can be found in the close correlation between the variables that are important in distinguishing between verdicts and the variables that are important in distinguishing between the criminally responsible and not responsible recommendations. Discriminant analysis established that the existence of a sex-related charge, the use of hard drugs, the number of prior criminal charges, and the defendant's race and education were the most significant variables in distinguishing between recommendations. These variables are virtually identical to those determined to be important in distinguishing verdicts. The only exception to this correlation is that the existence of prior psychiatric treatment is less significant in distinguishing recommendations.

the NGRI and Guilty groups. Second, using the prediction tests developed in the discriminant analysis of the NGRI and Guilty groups, the entire GBMI group was tested to see whether each GBMI defendant more closely resembled the composite of the NGRI or Guilty group.

For most of the variables that significantly differentiated the NGRI group from the Guilty group, the GBMI group tended to resemble the Guilty group more than the NGRI group. Typical of the similarity between the GBMI group and the Guilty group was the alcohol and drug use variable.[117] In the case of each individual drug — including alcohol — the percentage of users in the GBMI group was within 5% of the corresponding percentage for the Guilty group. These user percentages were significantly higher than the corresponding user rates for the NGRI group.

The GBMI group also included a greater percentage of sex-related crimes than the NGRI group.[118] Thus, the existence of a sex-related charge appears to greatly decrease the chances of an NGRI verdict.

Other significant variables in which the GBMI group more closely resembled the Guilty group included: fewer instances of prior psychiatric treatment,[119] more prior criminal charges,[120] less unemployment,[121] and less education.[122] With respect to the race variable, the GBMI group fell between the NGRI and Guilty groups.[123]

With respect to two variables, the GBMI group more closely resembled the NGRI group. Like the NGRI group, the GBMI group tended to be older than the Guilty group.[124] Similarly, like the NGRI group, people in the GBMI group tended to have a greater number of prior referrals to the Forensic Center than the Guilty group.[125]

Although the GBMI group more closely resembled the Guilty group for most variables, the most significant variable again proved to be the Forensic Center recommendation. In a comparison between groups on the recommendation variable, the GBMI group was similar to the Guilty group, and both were vastly different from the NGRI group.[126] Although more than 83% of those defendants found NGRI were recommended "not responsible" by the Forensic Center, only 11.7% of the GBMI group and 4.3% of the Guilty group were recommended "not responsible."[127]

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117. *See* Appendix A, Table I.
118. *See* Appendix A, Table K.
119. *See* Appendix A, Table J.
120. *See* Appendix A, Table H.
121. *See* Appendix A, Table G.
122. *See* Appendix A, Table G.
123. *See* Appendix A, Table E.
124. *See* Appendix A, Table E.
125. *See* Appendix A, Table J.
126. *See* Appendix A, Table L.
127. *See* Appendix A, Table L.

The importance of the Forensic Center recommendation was further demonstrated by applying the prediction tests derived from the demographic data for the NGRI and Guilty groups.[128] Under the prediction test derived from all the demographic variables excluding the Forensic Center recommendation, 57.4% of the GBMI group was predicted to have fallen into the Guilty group if guilty and NGRI were the only verdict choices. Correspondingly, 42.6% of the GBMI group was predicted to have fallen into the NGRI group under this test. By including the Forensic Center recommendation in formulating the prediction test, 72.3% of the GBMI group was predicted to have fallen into the Guilty group while only 27.7% of the GBMI group was predicted to have fallen into the NGRI group.

It is important to note the limitations of these prediction tests. The prediction tests are based on the similarity of demographic variables. It is *not* appropriate to conclude, for example, that, in the absence of the GBMI verdict, 72.3% of the GBMI defendants would in fact have been found guilty while 27.7% would have been found NGRI. Such precision is not possible because the variables used to develop the tests do not encompass all of the variables considered by a judge or jury in determining the appropriate verdict for the defendant or by the Forensic Center in making a recommendation. Nevertheless, it can be concluded from the aggregate of the variables recorded, that the majority of the GBMI defendants were more similar to the Guilty group than to the NGRI group. It is thus likely that at least a majority of the GBMI defendants would have been found guilty in the absence of the GBMI statute.

III. AN ASSESSMENT OF THE MICHIGAN GBMI VERDICT

A. Effect of the GBMI Verdict on the NGRI Verdict

A common prediction of both critics and proponents of the statute was that the GBMI verdict would not merely displace some number of defendants found NGRI, it would actually result in the elimination of the insanity defense.[129] Indeed, commentators have already surmised that those defendants found GBMI since the introduction of

128. *See supra* note 112.

129. One of the first groups to voice this fear was the American Civil Liberties Union, which contended throughout the legislative hearings that the new statute denied defendants due process of law because it encroached upon the insanity defense. MICH. HOUSE LEG. ANALYSIS SECTION, SECOND ANALYSIS OF MICH. H.B. 4363, 78th Leg. (June 11, 1975). *See also* Note, *supra* note 3, at 551 ("[I]nsanity acquittals will decline in number as the GBMI verdict becomes available. [It is] difficult to see how some defendants who had no criminal intent at the time of their criminal act will not be sent to prison.").

the statute would probably have been found NGRI in the absence of the GBMI option.[130]

There is no evidence from the first seven years of the statute's existence to support this conclusion. If the GBMI verdict were being used as an NGRI substitute, the proportion of defendants found NGRI since the new verdict went into effect should have decreased roughly in proportion to the number of individuals found GBMI. Indeed, if the GBMI verdict were eradicating the insanity defense, the percentage of NGRI acquittees should have decreased each year after 1975, as the GBMI verdict became more well-known and its use more widespread among prosecutors and defense attorneys in the Michigan courts. No such trend can be detected. As indicated above, prior to the introduction of the GBMI statute, 0.024% of the adult males arrested were found NGRI; in 1982, seven years after the GBMI statute was enacted, 0.032% of the adult males arrested were adjudicated NGRI. These figures controvert the prediction that the GBMI verdict would cause the demise of the insanity defense; the number of defendants found NGRI seems unaffected by the number of defendants found GBMI. To the extent that the insanity defense remains unaffected by the GBMI verdict, the GBMI statute has failed to meet its goal of reducing NGRI acquittals.[131]

B. Effect of the GBMI Verdict on the Guilty Group

Because NGRI acquittals have not decreased, GBMI convictions must be replacing defendants who, before the GBMI option existed, would

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130. One proponent of the statute claims that by 1978 he had already heard of "21 cases where pleas to GBMI were offered and accepted in lieu of almost certain NGRI verdicts." Robey, *supra* note 29, at 379-80. According to Terrence Boyle, Chief of the Criminal Division of the Wayne County Prosecutor's Office, most defendants found GBMI since 1976 would probably have been acquitted as NGRI if jurors had not had the additional option. Swickard, *Verdict out on mentally ill verdict*, Detroit Free Press, Sept. 28, 1982, at A3, col. 2, at A10, col. 2; *see also* Slovenko, *The Case Against "Guilty but Mentally Ill,"* Detroit Free Press, Feb. 14, 1983, at A11, col. 1 ("The GBMI verdict is reducing the number of NGRI pleas as well as NGRI verdicts.").

131. It is possible that a similar end may be reached by combining the GBMI verdict with other social reforms or changes — such as an aroused public consciousness of the abuse of the insanity defense. There would be, for example, a reduced likelihood of releasing another murderer like McGee if the defendants adjudicated NGRI between 1976 and 1982 exhibited different characteristics than those found NGRI prior to 1976. This would be the case if most defendants found NGRI prior to 1976 were charged with serious felonies, and most, or at least a significantly larger number of defendants found NGRI after 1976, were charged with less severe offenses. Recent studies, however, indicate that the demographic characteristics of NGRI defendants have not changed since 1975. *See supra* note 98.

The conclusion that the NGRI verdict has not been diminished by the introduction of the GBMI verdict is subject to the charge that the number of NGRI's might have grown in the absence of the new verdict, and that the GBMI verdict has therefore been successful to the extent that it has prevented such growth. *See supra* note 70. There may be merit to this claim, but, in the absence of any data indicating such a trend, it does not seem likely.

have been found guilty or not guilty. The GMBI verdict, however, requires a finding or an admission that the person committed the crime charged: thus, it is more likely that the guilty verdict is being displaced by the GBMI verdict.

This hypothesis is supported by comparing how GBMI and NGRI verdicts have been reached since 1976. This study has revealed that over 60% of those found GBMI received their verdict through a plea-bargain, whereas all defendants pleading NGRI were, necessarily, adjudicated through courtroom proceedings.[132] These plea-bargains are surprising because sentencing under a GBMI plea is no different from sentencing under a guilty plea.[133] One explanation for this behavior is that many defendants using the GBMI plea may never intend to be found NGRI in a courtroom proceeding, but merely want to use the implicit threat of pleading NGRI at trial as a bargaining chip for a shortened sentence.[134] A prosecutor is not likely to take the threat of an NGRI plea very seriously, however, when over 80% of those

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132. The statement that all defendants found NGRI were adjudicated through courtroom proceedings is somewhat misleading because it suggests that there was an adversarial process in these proceedings. Often, the NGRI trial is merely an uncontested formality that has much of the flavor of a plea-bargain. *See infra* note 136 and accompanying text.

133. *See* MICH. COMP. LAWS ANN. § 768.36(3) (1982).

134. Dr. Robey, Executive Director of the Michigan Forensic Services from 1967-1975, argues that this bargaining scenario is the greatest asset of the GBMI verdict, because it provides the opportunity to offer probation as an alternative to imprisonment:

> In the case of a defendant who has an NGRI defense which is supported even by the prosecutor's psychiatrist, and who is likely to be released as uncommittable, the GBMI plea allows the prosecutor to offer probation with treatment. The defendant is assured of his disposition, and the public is assured that there will be a five-year period where follow-up and treatment will be mandatory. If the probationer refuses to continue treatment, the prosecutor may institute probation violation proceedings. If the probationer becomes acutely psychotic, he can be civilly committed or may even be induced to enter a mental hospital as a "voluntary" admission by being offered prison as an alternative.

Robey, *supra* note 29, at 379.

This analysis of the plea-bargaining situation, however, assumes that in the absence of the GBMI verdict the defendant would probably be found NGRI. Data indicating that the number of NGRI verdicts have remained static since the introduction of the GBMI verdict suggests that the prosecution has not used the GBMI verdict to this effect.

From the defendant's perspective, it is also unclear that plea-bargaining GBMI would be of greater value than offering a guilty plea. The stigma attached to prisoners needing mental health care may keep such individuals from being paroled as early as other inmates who pleaded guilty to the same offense. *See* Interview with Dr. Ames Robey, Executive Director of the Michigan Forensic Services from 1967-1975, in Ann Arbor, Michigan (Oct. 6, 1981) ("There are many people who are mentally ill who don't want it on their criminal record, and with good reason. Parole boards are much more hesitant to release prisoners known to have had mental problems."). *See also supra* notes 16 & 17 (addressing issue of stigma associated with mental illness defenses). *But see* Interview with Dr. John Prelesnik, Superintendent of the Reception and Guidance Center at Jackson State Penitentiary, in Jackson, Michigan (Sept. 15, 1981) ("We're in a political arena now, so the reality of the situation has no purpose. The law really does not effect minimum parole or treatment.") [hereinafter cited as Prelesnik Interview]. The ultimate value of the plea-bargaining process can only be shown through a comparative study of the sentencing of defendants who have plea-bargained guilty, with those who have plea-bargained GBMI.

found GBMI have been certified as responsible by the Forensic Center.[135] Another possible explanation is that judges are more lenient in the sentences they impose on GBMI defendants, or that counsel believe that even though a client with a GBMI verdict is given as long a sentence as a defendant found guilty, he will be more likely to receive mental health care in the prison system. Finally, a cynical explanation is that a GBMI plea results from defense counsel deluding their clients about an imagined advantage of a GBMI verdict. The verdict creates an illusion of victory.

Demographic evidence supports the conclusion that defendants now being adjudicated GBMI would probably have been found guilty, not NGRI, in the absence of the GBMI statute. The GBMI and Guilty groups closely resembled each other in most of the variables that distinguished the NGRI and Guilty groups. The GBMI and Guilty groups had more drug and alcohol users, more sex-related charges, less prior psychiatric treatment, more prior criminal charges, less unemployment, and less education. Further, through the use of the prediction tests developed through discriminant analysis, most of those defendants found GBMI were predicted to have been found guilty in the absence of the GBMI alternative. The similarity of the GBMI and Guilty groups, combined with the observation that the same number of defendants are presently being found NGRI as prior to the introduction of the GBMI verdict, strongly suggests that the GBMI verdict has simply created a new class of individuals, the vast majority of whom, prior to 1975, would probably have been found guilty.

C. The Role of the Forensic Center

This study also concludes that Michigan's Center for Forensic Psychiatry wields considerable power in determining the verdict in insanity cases. Three separate parts of the study support this conclusion. First, the Forensic Center recommendation variable revealed a close correlation between a recommendation of "not responsible" and an NGRI verdict. A recommendation of "criminally responsible" substantially reduced the chances of receiving an NGRI verdict. Second, the recommendation variable had a substantial impact on the success rate of prediction tests developed through discriminant analysis. Prediction tests developed without the recommendation variable achieved only a 65% accuracy rate; tests using the recommendation variable achieved 100% accuracy.

Third, data concerning the type of trial and the use of expert psychiatric witnesses reflected the power of the Forensic Center. A

135. *See* Appendix A, Table L.

random sample of NGRI verdicts showed that the vast majority of those found NGRI came from bench trials. Moreover, the majority of the bench trials included Forensic Center staff members testifying on behalf of the defense. According to the staff of the Forensic Center, bench trials in which the Forensic Center testifies on behalf of the defense typically are cases in which both the defense and the prosecution tacitly agree that an NGRI verdict would be appopriate.[136] This pro forma agreement appears to be the result of the statutory duty of the Forensic Center to examine the defendant on behalf of the state. A prosecutor faced with a "not responsible" recommendation from the Forensic Center is not likely to contest the case vigorously. Consequently, the Forensic Center's role as examiner in all insanity cases could be the primary reason that the NGRI verdict has survived in significant numbers.

SUMMARY OF CONCLUSIONS

Proponents and critics of the GBMI verdict anticipated that the verdict would cause a substantial decrease in the number of NGRI acquittals. An empirical analysis of the GBMI verdict indicates that the verdict is not functioning as expected. The NGRI verdict continues to be used in Michigan courts. Thus, to the extent the GBMI verdict was intended to decrease NGRI acquittals, it has failed.

Three additional conclusions can be drawn from this study. First, most defendants found GBMI would probably have received guilty verdicts in the absence of the GBMI statute. Second, although the verdict was designed for jury trials, over 60% of those defendants found GBMI have come through plea-bargains and another 20% have come from bench trials. Finally, the use of a state-operated Forensic Center is an influential factor in any case in which insanity is raised as a defense. For this reason, states that do not possess a facility like the Michigan Forensic Center may not have the same experience with the GBMI statute as Michigan.

POSTSCRIPT

This study has shown that despite the introduction of the GBMI verdict, the insanity defense has survived in Michigan. Yet, the real impact of the GBMI verdict may be in the post-conviction stage rather than at trial. As a practical matter, the GBMI prisoner is not more likely to receive mental health treatment than the prisoner with a simple

136. *See* Benedek Interview, *supra* note 16. *See also* Appendix A, Table D notes (observing trial court stipulations to Forensic Center testimony).

guilty verdict;[137] the GBMI prisoner in Michigan is tested and evaluated like any other prisoner.[138] Thus, the danger of a GBMI statute rests not in the potential for jury compromise in insanity cases, but instead in the possible misconception among defendants that a GBMI verdict is in some way "better" than a guilty verdict.[139] To alleviate such a misconception and ensure that the defendant can make an educated choice whether to proceed with the insanity defense, it is crucial that the defendant be informed of the practical effects of a GBMI verdict.

Ironically, the GBMI statute ultimately may have a beneficial effect on mental health treatment in the prison system, as those GBMI prisoners who enter corrections expecting help and do not receive treatment will highlight the inadequacies of the system.[140] The mere addition of the label "guilty but mentally ill" will not correct the extensive problems of mental health care within the nation's prisons; however, by focusing attention on these problems the GBMI statute may pro-

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137. In one Michigan study, over 75% of the defendants found GBMI received no mental treatment and the majority of the others had only occasional check-ups from a corrections department psychiatrist. Press, *supra* note 5, at 56, 60. According to Ralph Slovenko, Professor of Law and Psychiatry at Wayne State University, the defendant found GBMI is handled and treated just like any other convicted person. Slovenko Letter, *supra* note 33, at A14, col. 4 (citing the case of an inmate found GBMI who had spent four years in prison with no psychiatric care). *See also*, Swickard, *supra* note 130, at A10.

Even before the GBMI verdict was available, corrections officials were required by statute to conduct psychological tests on defendants committed to any of their facilities and to recommend placement for those defendants in need of mental health care. *See* 1960 Mich. Pub. Acts 103, § 1 (current version at MICH. COMP. LAWS ANN. § 791.267 (1982)). The Michigan criminal code also requires psychological evaluation and provides civil commitment procedures for those found guilty of violent felonies and sex crimes. MICH. COMP. LAWS ANN. § 791.268 (1982). Because the GBMI statute requires treatment only when "psychiatrically indicated" by such testings, *id.* § 768.36(3), the verdict does not guarantee the GBMI prisoner mental health care.

138. Dr. John Prelesnik, Superintendent of the Reception and Guidance Center at Jackson State Penitentiary, states that "in reality GBMI prisoners are treated like any other prisoners; they will get extra treatment if they need it, but that's the same treatment we give everyone else." Prelesnik Interview, *supra* note 134. In this respect, Prelesnik views the GBMI verdict as no more than "a crazy plea bargain." *Id.*; *see also supra* note 49.

Testing at Jackson State Penitentiary has revealed that upon entering prison, only 50% of those defendants diagnosed as GBMI show signs of mental disorders. Letter from John Prelesnik, Superintendent of the Reception and Guidance Center at Jackson State Penitentiary, to John Mortiz (Feb. 26, 1981) (on file with the *Journal of Law Reform*). *See also supra* note 49.

In addition, other states have held that all mentally ill prisoners possess a *constitutional* right to treatment while incarcerated. *See, e.g.*, Donaldson v. O'Connor, 493 F.2d 507 (5th Cir. 1974), *vacated on other grounds*, 422 U.S. 563 (1975); State in Interest of R.G.W., 145 N.J. Super. 167, 366 A.2d 1375 (1976); People v. Feagley, 14 Cal. 3d 338, 535 P.2d 373, 121 Cal. Rptr. 509 (1975). If this right were clearly recognized, the distinguishing feature between a guilty and a GBMI verdict — the right to treatment — would be merely illusory.

139. The high percentage of defendants who plea-bargain for a GBMI verdict (as opposed to being found GBMI by a court or jury) implies that at least some defendants have been counseled to believe that a GBMI verdict is superior to a guilty verdict.

140. "[P]roper application of a guilty but mentally ill verdict requires that states commit the necessary resources to house and treat those recommended for psychiatric supervision. If we are serious about treating the ills of the insanity laws, we must be willing to pay the medical bills for the cures." Kaufman, *supra* note 5, at 19.

vide the impetus necessary to improve the treatment of the mentally ill criminal.

—Gare A. Smith & James A. Hall

APPENDIX A

TABLE A

Distribution of NGRI and GBMI by Year

Year	Male Adults Arrested	GBMI	Percent of Adult Males Arrested	NGRI	Percent of Adult Males Arrested
1972	223,787	—	—	53	0.024%
1973	234,027	—	—	62	0.026%
1974	244,765	—	—	66	0.027%
1975	250,251	4*	—	56	0.022%
1976	263,513	11	0.004%	32	0.012%
1977	222,803	51	0.023%	47	0.021%
1978	198,969	17	0.009%	51	0.026%
1979	191,857	41	0.020%	68	0.035%
1980	197,362	39	0.020%	64	0.032%
1981	215,449	40	0.019%	54	0.025%
1982	200,744†	38	0.019%	65	0.032%

*Figure reflects only last three months of year.

†Figure is projected total for year based on average of preceeding months for which records are available. There were a total of 100,372 adult males arrested in the first six months of 1982.

TABLE B

Criminal Responsibility Evaluations

Year	CR Evaluations	Number & Percent Found NGRI	Number & Percent Found GBMI
1976	401	32 (8.0%)	11 (2.7%)
1977	561	47 (8.4%)	51 (9.1%)
1978	746	51 (6.8%)	17 (2.3%)
1979	948	68 (7.2%)	41 (4.0%)
1980	1122	64 (5.7%)	39 (3.4%)
1981	1082	54 (5.0%)	40 (3.7%)
1982	1060	65 (6.1%)	38 (3.6%)

TABLE C

Adjudication of NGRI and GBMI Defendants

	Plea	Bench Trial	Jury Trial
GBMI (Total = 36)	22 (61%)	7 (19%)	7 (19%)
NGRI (Total = 38)	0 (0%)	34 (90%)	4 (10%)

TABLE D

Use of Expert Psychiatric Witnesses in NGRI and GBMI Trials

(1) Expert Witnesses: Defense

	Forensic Center Testimony		Private Psychiatrist	
	Bench Trial	Jury Trial	Bench Trial	Jury Trial
GBMI	3/7 (43%)*	1/7 (14%)	4/6 (67%)**	7/7 (100%)**
NGRI	25/34 (74%)†	0/3 (0%)	15/34 (44%)††	4/4 (100%)††

(2) Expert Witness: Prosecution

	Forensic Center Testimony	
	Bench Trial	Jury Trial
GBMI	3/6 (50%)	5/7 (71%)
NGRI	16/34 (47%)	4/4 (100%)

*At one GBMI bench trial, the Forensic Center's report was admitted by stipulation without the presence of a forensic examiner. In those trials in which the defense called for testimony from the Forensic Center, the prosecution never offered opposing testimony.

**If the defense only used testimony of an independent examiner, the prosecution matched that testimony with testimony from the Forensic Center eight out of nine times.

In only two of 13 bench trials did neither side rely on testimony from the Forensic Center.

†At eight NGRI bench trials, the Forensic's report was admitted by stipulation without the presence of a forensic examiner. Where the defense called for Forensic Center testimony, the prosecution offered opposing testimony in only eight out of 24 cases. In at least four of these cases it appears that this was done for form only. In one case the defense called no witnesses and the prosecution called a forensic examiner to testify that the defendant was insane.

††If the defense only presented the testimony of an independent examiner, the prosecution matched that testimony with testimony from the Forensic Center 10 out of 11 times.

Testimony from the Forensic Center was relied on by one or both sides in all but one case.

TABLE E

Age and Race

Variable	GBMI	NGRI	Guilty
Race			
White	87 (61.7%)	161 (53.3%)	146 (69.5%)
Black	51 (36.2%)	138 (45.7%)	59 (28.1%)
Other	3 (2.1%)	3 (1.0%)	5 (2.4%)
Age			
21 & under	14 (10.1%)	23 (8.7%)	50 (23.9%)
22-30	63 (45.3%)	118 (45.0%)	87 (41.6%)
31-40	40 (28.8%)	75 (28.6%)	43 (20.6%)
41 & over	22 (15.8%)	46 (17.5%)	19 (13.8%)

TABLE F

Crime Location

Urban-Rural (by county population)	GBMI	NGRI	Guilty
Less than 50,000	15 (10.6%)	27 (8.9%)	31 (14.7%)
50,000-100,000	5 (3.5%)	8 (2.6%)	12 (5.7%)
100,000-400,000	28 (19.9%)	69 (26.2%)	58 (27.5%)
More than 400,000	93 (66.0%)	159 (60.5%)	110 (52.1%)
Particular Counties			
Bay	0 (0.0%)	1 (0.3%)	11 (5.2%)
Genesee	4 (2.8%)	11 (3.6%)	21 (10.0%)
Grand Traverse	0 (0.0%)	6 (2.0%)	3 (1.4%)
Ingham	7 (5.0%)	8 (2.6%)	6 (2.8%)
Jackson	1 (0.7%)	9 (3.0%)	4 (1.9%)
Kalamazoo	3 (2.1%)	12 (4.0%)	2 (0.9%)
Kent	11 (7.8%)	26 (8.6%)	17 (8.1%)
Macomb	4 (2.8%)	11 (3.6%)	13 (6.2%)
Monroe	3 (2.1%)	8 (2.6%)	4 (1.9%)
Oakland	9 (6.4%)	32 (10.6%)	15 (7.1%)
Saginaw	5 (3.5%)	8 (2.6%)	11 (5.2%)
Washtenaw	3 (2.1%)	32 (10.6%)	10 (4.7%)
Wayne	65 (46.1%)	105 (34.8%)	44 (20.9%)

TABLE G

Experiential Variables

Variable	GBMI	NGRI	Guilty
Marital Status			
Single	61 (44.2%)	174 (57.6%)	115 (55.0%)
Married	30 (21.7%)	46 (15.2%)	36 (17.2%)
Divorced/Separated	39 (28.2%)	66 (21.9%)	52 (24.9%)
Other	8 (5.8%)	16 (5.3%)	6 (2.9%)
Education			
0-6	6 (4.3%)	18 (6.2%)	10 (5.0%)
7-11	73 (52.9%)	115 (40.1%)	122 (60.8%)
High School Graduate	31 (22.5%)	96 (33.6%)	50 (24.9%)
Some College	20 (14.5%)	39 (13.6%)	17 (8.5%)
College Graduate	3 (2.2%)	8 (2.8%)	2 (1.0%)
Postgraduate	5 (3.5%)	10 (3.3%)	0 (0.0%)
Employment Status			
Employed	51 (36.2%)	71 (23.8%)	58 (27.9%)
Unemployed	80 (56.7%)	211 (70.8%)	123 (59.1%)
Unknown/Retired	10 (7.1%)	16 (5.4%)	28 (13.0%)
Occupation			
Blue Collar	131 (94.9%)	191 (93.2%)	194 (98.0%)
White Collar	7 (5.1%)	14 (6.8%)	4 (2.0%)

TABLE H

Prior Criminal Charges

Number of Prior Charges	GBMI	NGRI	Guilty
None	30 (22.2%)	112 (41.5%)	30 (15.8%)
1-3	54 (40.1%)	125 (46.4%)	102 (53.7%)
4-5	23 (17.0%)	23 (8.2%)	28 (14.7%)
6 or more	28 (20.7%)	11 (4.2%)	30 (15.7%)

TABLE I

Drug Use

Drug Use*	GBMI	NGRI	Guilty
Alcohol	105 (80.2%)	111 (42.2%)	156 (73.9%)
Amphetamines	29 (20.6%)	34 (12.0%)	52 (24.6%)
Hallucinogens	53 (40.4%)	51 (25.0%)	72 (39.1%)
Barbiturates	31 (22.1%)	25 (12.3%)	38 (20.6%)
Marijuana	66 (46.8%)	66 (25.1%)	8 (46.4%)
PCP	31 (22.0%)	25 (9.5%)	45 (21.3%)
Heroin	24 (17.0%)	25 (9.5%)	41 (19.4%)
No drug use noted	18 (12.8%)	31 (11.8%)	13 (6.2%)
Hard Drug Use**			
User of hard drugs	64 (48.9%)	63 (35.6%)	90 (48.9%)
Non-user of hard drugs	67 (51.1%)	114 (64.4%)	94 (51.1%)

*See explanation of term *supra* note 93.

**The "Hard Drug" category does not include alcohol or marijuana.

TABLE J

Previous Psychiatric Contacts

Forensic Center Referrals

	GBMI	NGRI	Guilty
None	49 (35.0%)	45 (40.5%)	143 (67.8%)
1-3	78 (55.8%)	54 (48.6%)	62 (29.4%)
4 or more	13 (9.2%)	12 (10.8%)	6 (2.8%)

Psychiatric Treatment

	GBMI	NGRI	Guilty
Some Treatment	70 (49.6%)	213 (81.6%)	107 (50.7%)
No Treatment	44 (31.2%)	46 (17.6%)	87 (41.2%)
Unknown	27 (19.1%)	2 (0.8%)	17 (8.1%)

TABLE K

Criminal Charges

	GBMI	NGRI	Guilty
Open murder	5 (3.5%)	28 (9.3%)	12 (5.7%)
Murder I	26 (18.4%)	24 (7.9%)	20 (9.5%)
Murder II	11 (7.8%)	14 (4.6%)	4 (1.9%)
Manslaughter	0 (0.0%)	2 (0.6%)	1 (0.5%)
Assault with intent to commit murder	23 (16.3%)	49 (16.2%)	26 (12.3%)
Assault with intent to commit great bodily harm	5 (3.5%)	23 (7.6%)	7 (3.3%)
Felonious assault	10 (7.1%)	45 (14.9%)	26 (12.3%)
Assault with intent to commit criminal sexual conduct	5 (3.5%)	0 (0.0%)	3 (1.4%)
Criminal sexual conduct	34 (24.1%)	20 (6.6%)	41 (19.4%)
Kidnapping	5 (3.5%)	2 (0.6%)	6 (2.8%)
Arson	4 (2.8%)	13 (4.3%)	5 (2.4%)
Armed robbery	23 (16.3%)	27 (8.9%)	20 (9.5%)
Unarmed robbery	2 (1.4%)	3 (1.0%)	1 (0.5%)
Breaking and entering	13 (9.2%)	28 (9.3%)	45 (21.3%)
Larceny	2 (1.4%)	10 (3.3%)	16 (7.6%)
Concealing stolen property	2 (1.4%)	2 (0.6%)	3 (1.4%)
Carrying a concealed weapon	12 (8.5%)	33 (10.9%)	23 (10.9%)
Unlawfully driving away an automobile	5 (3.5%)	12 (4.0%)	10 (4.7%)
Child cruelty	0 (0.0%)	1 (0.3%)	2 (0.9%)
Malicious destruction of property	3 (2.1%)	10 (3.3%)	5 (2.3%)
Other felonies	15 (10.6%)	11 (3.6%)	14 (6.6%)
Misdemeanors	1 (0.7%)	5 (1.7%)	2 (0.9%)
Types of Crimes			
Homicides	41 (29.7%)	55 (21.0%)	36 (17.1%)
Non-homicides	97 (70.3%)	207 (79.0%)	175 (82.9%)
Sex-related crimes	37 (26.8%)	17 (6.5%)	41 (19.4%)
Non-sex-related crimes	101 (73.2%)	245 (93.5%)	170 (80.6%)
Crimes against persons	118 (85.5%)	192 (73.3%)	143 (67.8%)
Crimes against property	20 (14.5%)	70 (26.7%)	68 (32.2%)

TABLE L

Forensic Center Recommendation

Recommendation	GBMI	NGRI	Guilty
Criminally Responsible	112 (81.7%)	14 (15.4%)	202 (95.7%)
Not Responsible	16 (11.7%)	76 (83.5%)	9 (4.3%)
Other	9 (6.6%)	1 (1.1%)	0 (0.0%)

APPENDIX B

Forensic Center Evaluation and Recommendations
(1976-1981)